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CURRENT TOPICS

Mr. Nathaniel Micklem, Q.C.

THE late Mr. NATHANIEL MICKLEM, Q.C., who died on 19th March, 1954, at the age of 100, was a son of Mr. Thomas Micklem, a solicitor, of Boxmoor, Hertfordshire. At New College, Oxford, he followed up a First in jurisprudence with a First in his B.C.L., was President of the Union, and stroked his college boat for two years. All this was between 1877 and 1880, and he never subsequently fell short of this perfection. On his call to the Bar he was winner of the Bairstow Scholarship and the certificate of honour. After a successful practice at the junior bar he took silk in the reign of Queen Victoria in 1900. From 1906 to 1910 he represented Watford in Parliament as a Liberal. From 1924 he was a member of the Royal Commission on Lunacy and Mental Disorder and for 1930 he was chairman. In 1930 he was Treasurer of Lincoln's Inn. The late Mr. Micklem's career is one of which members of both professions can be proud. He richly deserved the reward of longevity, and all the other great prizes which he received.

Estate Duty on Gifts Inter Vivos

IN July, 1953, the Board of Inland Revenue announced that they were advised that where estate duty is imposed by s. 2 (1) (*c*) of the Finance Act, 1894, incorporating s. 38 (2) (*a*) of the Customs and Inland Revenue Act, 1881, as amended by s. 11 (1) of the Customs and Inland Revenue Act, 1889, upon "property taken" under a disposition purporting to operate as a gift *inter vivos*, the expression "property taken" must be read with s. 22 (1) (*f*) of the Finance Act, 1894, which defines "property," and that where the donee sold or exchanged the gifted property before the donor's death, duty would thenceforth be claimed, not in respect of the property originally given, but in respect of the proceeds of the sale or exchange or the reinvestments thereof. This change of practice was discussed in an article at 97 SOL. J. 627. The meaning of the expression "property taken" under a disposition purporting to operate as a gift *inter vivos* has since been considered by the House of Lords in *Sneddon* v. *Ld. Adv.* [1954] 2 W.L.R. 211; *ante*, p. 105, and it appears that the practice mentioned above is not in accordance with the law. An official announcement issued by the Board on 18th March accordingly states that it will no longer be followed. In future, it is stated, the estate duty in respect of property taken under a disposition purporting to operate as a gift *inter vivos* will be regarded as imposed upon the property originally given, whether absolutely or by way of settlement, and in this context the word "property" will not be given the extended meaning assigned to it by s. 22 (1) (*f*) of the Finance Act, 1894.

Accountants and the Drafting of Wills

WISE words were spoken by Mr. JAMES BLAKEY, F.C.A., President of the Institute of Chartered Accountants in England and Wales, in reply to a toast proposed by the BISHOP OF BIRMINGHAM at the annual dinner of the Birmingham and District Society of Chartered Accountants on 4th March.

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Talking of the executorship work of chartered accountants, he said: "I must add a word of caution in connection with legal matters. Whilst it is desirable that we should advise our clients in regard to the contents of their wills, we ought not to undertake responsibility for the final drafting of the will itself. This is much better left to solicitors. When a chartered accountant is appointed executor and is called upon to carry out his duties as such, he will be well advised to keep in touch with solicitors on legal matters. Conversely, we would do well to encourage our legal friends to consult us on accounting matters, when they themselves are acting as executors. It is just as unwise for a solicitor to try to be an accountant as it is for an accountant to try to be a solicitor." The trouble is that it does not take so long for solicitors to find out that preparing balance sheets and profit and loss accounts is a formidable job which needs a long preliminary training as it does for members of other professions to discover that legal advice and drafting are not the simple tasks they sometimes appear to be. In this matter we believe chartered accountants do not transgress anything like as much as members of other professions, but we are grateful to Mr. Blakey for his reminder.

Legal Language

"MUST we put up," asked Mr. RONALD S. RUSSELL, M.P., in a letter to *The Times* of 16th March, "with the strange language of letters of allotment, with their use of words like 'definitive' for 'final,' 'the same' instead of 'them,' and 'within mentioned' and 'below written'"? The latter are "just horrible and quite unnecessary," he wrote. A habitual recipient of letters of allotment may well be irritated by matters which to people who are not encumbered with the cares and responsibilities of ownership seem trivial. The "happy man" of legend was shirtless, but to those who are still unwilling to seek happiness the hard way, the reply of the Secretary of the Chartered Institute of Secretaries, Mr. A. M. ALLEN, in *The Times* of 18th March will give a salutary reassurance that neither ink nor paper is wasted in unnecessary words in letters of allotment. His reply was apt, and his quotation from Sir ERNEST GOWERS, the famous author of "Plain English," was even more apt: "These documents impose obligations and confer rights, and neither the parties to them nor the draftsmen of them have the last word in deciding exactly what those rights and obligations are. That can only be settled in a court of law on the words of the document." The draftsman "must avoid all graces, not be afraid of repetitions, or even of identifying them by aforesaids."

Hospitals' Liability for Doctors' Negligence

REFERRING to a recent award of damages against the matron and the management committee of a hospital, a writer in the *Lancet* of 19th March, 1954, argued that "special forensic conditions" arise if hospitals can be sued for damages on the ground of the negligence of the doctors they employ. "The hospital may want to throw the blame on the doctor or vice versa; juries, too, may be more generous if they reflect that the supposedly bottomless purse of the State may be available to pay the damages awarded against the hospital . . . How can the medical practitioner tolerate the view that he is the employee or the servant of anybody but his patient?" If the question of fact as to whether anyone is a servant or agent of another can ever depend on whether such person can "tolerate" it, then everyone would be a law to himself. But on the broad question whether hospitals will tend to blame doctors and doctors to blame hospitals when the law clearly allows hospitals to be sued for their doctors' negligence, it is doubtful whether that tendency, which already exists to a pronounced extent, is likely to increase. Nor are the alleged deficiencies of juries an excuse for excluding hospitals from the operation of the ordinary rules of law.

Delays in Magistrates' Courts

A PROTEST by a business man against repeated adjournments in the magistrates' courts, in a letter to *The Times* of 19th March, will, it is hoped, awaken public opinion in the matter. The writer had to give evidence as to the character of an employee. Having attended on three occasions, for two and one-quarter hours on the first occasion and one and three-quarter hours on the second, he was glad to find the case end in dismissal. He commented: "the interruption in business over a small matter like this must be accumulatively serious if multiplied by the number of cases where a question like this arises." He made the further point that counsel agreed to take the case for a very small figure in the anticipation that it would last one hour. The subsequent adjournments meant that the counsel was in the end considerably out of pocket. He felt that such action would eventually mean that counsel would not take simple cases unless they could be assured that the matter would be heard without delay. The metropolitan magistrates, we submit, are obviously overburdened, and either more must be appointed, or the lay justices must take a larger share of the work.

The Landlord and Tenant Bill: Auctioneers' and Estate Agents' Proposals

THE PRESIDENT of the Incorporated Society of Auctioneers and Landed Property Agents has sent a letter to Sir DAVID MAXWELL FYFE on the subject of the Landlord and Tenant Bill recommending that the terms of a ground lease (except those as to rent and repairs) should automatically be the terms of any new tenancy granted under Pt. I of the Bill, and any alterations should be made by application under existing rules and not in proceedings for a new tenancy. He wrote that the result of the new proposals would be to make it possible for a series of county court decisions to turn a residential neighbourhood into a collection of boarding houses, or a fine estate into a closely-packed suburb, in a very short time. The existing provisions for extinction of covenants (which will in any event be extended if cl. 50 of the Bill is enacted) are sufficient for their purpose, and to give a court complete discretion to amend or abolish any covenant is an innovation which does not accord with the trend of past legislation. He further suggested that a tenant of business premises ought not to qualify for a new lease under Pt. II unless he can show some minimum period of occupation, say of three years. As the Bill is now drafted it appears that a tenant of business premises could in many cases assign the fag-end of his term to, say, a large multiple concern, which would be glad to pay him a substantial sum for the chance of stepping into his shoes. Another proposal in the letter is that the grounds on which a landlord may oppose an application for a new lease under Pt. II ought to include a right to possession in the interests of good estate management. The letter concluded with a criticism of cl. 5, which provides that a residential tenant to whom the Act applies may by one month's notice end his tenancy either at the term date or, if the tenancy has continued under cl. 3, at any time thereafter. The period of one month is said to be too short a period in which to make proper arrangements for re-letting the property. It is suggested that the period of notice should be the same as the period by reference to which rent has been paid under the ground lease.

THE TOWN AND COUNTRY PLANNING BILL—II

In the first article of this series the meaning of the expression "claim holding" used in the new Town and Country Planning Bill was discussed. This article deals with the special payments proposed to be made in respect of claim holdings as soon as possible after the Bill becomes law.

The cases in which these payments will be made are set out in Pt. I of the Bill and are described there as Case A, Case B, Case C and Case D. Provision is also made for "Payment in cases analogous to Case B" and "Residual payments in cases analogous to Cases A and B."

The complicated and technical phraseology of the Bill came in for comment and criticism in the course of the Second Reading debate in the House of Commons, and it is by no means easy to explain simply. However, in the case of the special payments, there will always be at least three common elements, namely, (1) the client who wants to know whether or not he will be entitled to a special payment, (2) a piece of land which he may or may not own, and (3) a claim holding relating to that land of which he may or may not be the holder. In the following explanation these will be simply referred to as the client, the land, and the claim.

Case A

Broadly speaking, Case A enables persons who have paid development charge to recover it up to the value of the claim holding, provided that they hold the claim, while the residual payments in cases analogous to Case A go to those who have paid development charge after buying land in excess of existing use value from vendors who retained the claim.

The client will be entitled to a payment under Case A (cl. 4)—

(1) if he holds the claim and has paid a development charge; or

(2) if he holds the claim and owns the land and his predecessor in title to the land paid a development charge.

The client will be entitled to a residual payment in a case analogous to Case A (cl. 12) if—

(1) he owns the land but does not hold the claim;
(2) he has paid a development charge; and
(3) either—

(*a*) he, or his predecessor in title to the land, bought the land at a price in excess of existing use value from a person who, at the time of the purchase, both owned the land and held the claim; or

(*b*) a testator who owned the land and held the claim immediately before his death died between 1st July, 1948, and 26th February, 1954, having devised the land to one person and bequeathed the claim to someone else.

The principal amount of a Case A payment will be the amount of the development charge paid up to but not exceeding the amount of the claim holding, or, where the land on which the charge was paid was only part of the claim holding, not exceeding the part of the value of the claim holding properly attributable to that part (cl. 4 (3) and (4)).

The principal amount of a residual payment is left to the discretion of the Central Land Board, but it must not exceed the value of the claim holding less any amount payable to the holder of the holding under any of the Cases A–D (cl. 12 (5) and (6)).

Where the development charge was in effect paid by pledging the claim to the Central Land Board, e.g., under the near-ripe scheme, the claim holding will simply be extinguished or reduced, as the case may be, according to whether the charge exceeds the claim or is less than the claim. Where the claim was pledged to the Board under the special single house plot scheme, it will be extinguished in every case automatically (Sched. II).

Case B

Broadly speaking, Case B entitles persons who have sold their land at existing use value, or at a price which only partially included development value, either to a public authority or to a private individual to recover the amount of the development value not included in the sale price.

The client will be entitled to a payment under Case B (cl. 6) if—

(1) he holds the claim; and
(2) he also owned the land, but either—

(*a*) has sold it, or sells it before the commencement of the new Act, to a public authority possessing compulsory powers of purchase, either under a compulsory purchase order or by agreement, at a price which (excluding compensation for severance or injurious affection) is less than its existing use value plus the value of the claim; or

(*b*) sold it to a private individual before the 18th November, 1952, at a price less than its existing use value plus the value of the claim.

The residual payments in cases analogous to Case B go to those who have bought land at a price in excess of existing use value from a vendor who retained the claim and have then suffered loss because a public authority has come along and bought it, under threat of compulsory purchase, at its existing use value.

The client will be entitled to a residual payment (cl. 12) if—

(1) he owned the land but never held the claim;
(2) he has sold or sells the land to a public authority possessing powers of compulsory purchase, either by compulsion or agreement; and
(3) either—

(*a*) he, or his predecessor in title to the land, bought it at a price in excess of existing use value from a person who, at the time of the purchase, owned the land and held the claim; or

(*b*) a testator who owned the land and held the claim immediately before his death died between 1st July, 1948, and 26th February, 1954, having devised the land to one person and bequeathed the claim to someone else.

Payments in cases analogous to Case B go to persons who hold claims but who, instead of selling their land outright at a price excluding wholly or partially its development value, have either disposed of it in some other way or have been compensated for damage to it in such a way that the consideration or the compensation does not reflect the development value. A client will be entitled to such a payment (cl. 11) if—

(1) he holds the claim;
(2) he owns the land;
(3) (*a*) he has granted a tenancy, or

(*b*) he has sold the land in consideration of a rent-charge, or

(*c*) he has received from a public authority compensation for damage to that land caused by severance or injurious affection resulting from the acquisition by the authority of other land, or

(*d*) he has received compensation under s. 2 of the Compensation (Defence) Act, 1939, for damage to the land while under requisition; and

(4) the rent, rent-charge or compensation does not reflect adequately the development value of the land.

The principal amount of a Case B payment will be the value of the claim less the amount by which the sale price exceeded the existing use value (cl. 6 (4)). Development value represented in agreed claims is the difference between the restricted (existing use) value and unrestricted value of land as at 1st July, 1948, calculated by references to 1947 values. The existing use value of land has in general tended to rise since 1948, and it is the existing use value at the date of the sale and not the restricted value on 1st July, 1948, which is to be used in calculating the principal amount of the payment (cl. 7).

The principal amount of a residual payment in a case analogous to Case B is in the discretion of the Central Land Board, but will not exceed the value of the claim holding less any amount payable to the holder of the holding under any of the Cases A–D (cl. 12 (5) and (6)).

The principal amount of a payment in a case analogous to Case B is in the discretion of the Central Land Board, but not exceeding the value of the claim (cl. 11 (5)).

A client will also be entitled to a payment under either Case A or Case B if he has succeeded to the claim (e.g., as mortgagee) from a person who would have been entitled to the payment if he had continued to hold it, provided that the client has not bought the claim unless the purchase was with the consent of the Central Land Board after the 18th November, 1952 (cl. 10).

Examples of Cases A and B and Related Payments

Cases A and B and their related payments are far more complicated and more common than Cases C and D, so it may be appropriate to give here a few simple examples of their probable working.

(1) *A* holds a claim holding value £500 on land, and has paid a development charge of £500. *A* may expect to receive £500 (Case A).

(2) *A* holds a claim holding value £500 on land existing use value at all material times £20. In 1950 he sold the land to *B* for £250, retaining the claim. *B* has paid a development charge of £500. *A* may expect to receive £270 (Case B); *B* may expect a residual payment of £230 (residual payment in a case analogous to Case A).

(3) *A* holds a claim holding value £500 on land existing use value on 1st July, 1948, £20. In 1952 a local authority buy it by agreement under threat of compulsory powers and pay for it £50 existing use value then. *A* may expect to receive £500 (Case B).

(4) *A* holds a claim holding value £500 on land, existing use value on 1st July, 1948, £20. In December, 1948, he sold it to *B* for £250, retaining the claim. In 1952, a local authority bought the land from *B* under threat of compulsory powers at the then existing use value of £50. *A* may expect to receive £270 (Case B); *B* may expect to receive a residual payment in a case analogous to Case B of £230.

(5) *A* held a claim holding value £500 and the land to which it related, existing use value £20. In 1950 he sold the land to *B* for £300 and assigned the claim to *B*. *B* has paid a development charge of £400. *A* will receive nothing. He does not fall under any provision. *B* will receive £400 (Case A).

(6) *A* holds a claim holding value £1,000 on land which was agricultural, existing use value £100. In 1950 he let the land, for use as an open air amusement park, to *B* for twenty-one years at a rent of, say, £4 a year based on the existing use value. If the rent had been based on the full value of £1,100 it would have been £44 a year. *B* has paid a development charge of £600 for the twenty-one years' period. *A* may expect to receive a payment related to the difference between the capital value of the £4 rent and that of the £44 rent (case analogous to Case B). *B* will receive nothing. If the rent had been between £4 and £44 he might have expected to receive a residual payment in a case analogous to Case A.

(7) *A* held a claim holding value £500 on land, existing use value £20. He died in 1950, having devised the land to *B* and bequeathed the claim to *C*. In 1951 *B* sold the land to *D* for £250. *D* has paid a development charge of £400. *B* and *C* will receive nothing. Though the wording of the relevant clause (12 (4)) is not very clear it may be that *D* will receive £400 as a residual payment in a case analogous to Case A, though, as *B* and *C* apparently receive nothing, the word "residual" is something of a misnomer.

(8) The circumstances are as in (7) but, instead of selling to *D*, *B* developed the land himself and paid a development charge of £400. *B* may expect to receive £400 as a residual payment in a case analogous to Case A, though here again "residual" is hardly an appropriate word as *C* will receive nothing.

(9) *A* held a claim holding value £500 on land existing use value £20. In 1950 he paid a development charge of £400. In 1952 he died devising the developed land to *B* and bequeathing the claim to *C*. *C* may expect to receive the £400 as a person deriving title under the original claim holder. *B* will receive nothing.

Where there is no claim, no one in any of these circumstances will, of course, receive anything.

Case C

Case C will be comparatively rare. The client will be entitled to a payment under this Case (cl. 8) if—

(1) he owned the land and held the claim; and

(2) he disposed of the land by gift between the 1st July, 1948, and the 18th November, 1952, otherwise than by will or *donatio mortis causa*, retaining the claim.

He will also be entitled if he derives title to the claim from a person who would have been entitled to a payment under Case C if he had continued to hold the claim (cl. 10).

The principal amount of the payment will be the value of the claim.

Case D

Case D covers those who bought a claim without the land. A client will be entitled to a payment under Case D (cl. 9) if—

(1) he became the holder of the claim under a disposition of the claim for valuable consideration (not being a mortgage) before the 18th November, 1952, or before the commencement of the new Act if pursuant to an option granted before 18th November, 1952; and

(2) he has at no time since he took the claim owned the land.

This represents a departure from the White Paper, para. 52, which foreshadowed that payments would only be made to persons who had bought claims where a payment was due to be made because, e.g., of some planning restriction. Under the clause, the person who bought the claim will get his money back even if nothing happens to the land.

The principal amount of the payment will be the value of the claim or the amount of the consideration given for the claim, whichever is the less. If the claim has been disposed of several times, it is the consideration given on the last disposition only which counts.

So—

(1) if *A* held a claim value £500 relating to land existing use value £20, and in 1950 sold the land to *B* for £250 and the claim to *C* for £50, and *B* subsequently paid a development charge of £500, *C* may expect to receive £50 (Case D), *B* may expect to receive a residual payment in a case analogous to Case A, and *A* will receive nothing;

(2) if *A* owns land from which the claim has been separated, the claim being vested in *C* who bought it for £20, and *A* bought the claim back from *C* for £50, neither *A* nor *C* will receive anything. *A*, however, may have derived some benefit because, as will be seen later, the whole value of the claim will attach to the land for the purposes of the other Parts of the Act, whereas, if it had remained vested in *C*, the whole would have been extinguished on the payment to *C*, by the Central Land Board of £20 under Case D.

Miscellaneous

In describing the amount receivable under the foregoing cases, reference has been made to the principal amount. In addition, the Government will pay to successful applicants for payments interest at the rate of 3½ per cent. per annum on the principal amount from the 1st July, 1948, to the date of payment or to 30th June, 1955, whichever is the earlier (cl. 15 (1)).

Claims have to be made to, and payments are to be made by, the Central Land Board. Clause 14 provides for an appeal to the Lands Tribunal against any determination of the Board.

It is probable that the making of these payments will be the last function of the Board, as other payments under the Bill are to be made by the Minister of Housing and Local Government and cl. 65 contains provisions for the winding up and dissolution of the Board by Order in Council.

The rights of mortgagees of land in relation to Pt. I payments are to be protected by regulations. Clause 68 provides that regulations may be made as to the exercise of the right to apply for a payment, as to the person to whom it is to be made, and as to its application, where the right to apply for the payment is exercisable by reference to land which is subject, or was subject at a time specified in the regulations, to a mortgage, a rent-charge or the trusts of a settlement.

The foregoing is of necessity only a comparatively brief and general statement of some lengthy and complicated provisions in the Bill. For instance, the article refers for simplicity to ownership of land as though only the freehold were involved; in fact, the Bill refers to a person being entitled to an interest in land and so its provisions cover leasehold as well as freehold interests; two or more claims may, of course, subsist in the same land, one relating to the freehold and one to the leasehold interest. For full details the reader, must, of course, be referred to the Bill.

These then are the Pt. I payments to be made as soon as possible after the Bill becomes law. The other payments to be so made, namely, those for planning restrictions imposed before the commencement of the new Act, will be discussed in the next article of this series together with the all important "unexpended balance of established development value" and compensation for planning restrictions generally.

R. N. D. H.

A Conveyancer's Diary

PURCHASE MONEY BY INSTALMENTS

The enforceability of a provision in a contract forfeiting all instalments of purchase money already paid in the event of failure to pay an instalment of purchase money currently due has for some time been a question of difficulty, and the recent decision in *Stockloser* v. *Johnson* [1954] 2 W.L.R. 439 and p. 178, *ante*, has not done a great deal to resolve the doubts which surround it. The modern cases on the subject begin with *Steedman* v. *Drinkle* [1916] 1 A.C. 275, a Privy Council decision. The agreement under consideration in that case was an agreement for the sale of land of which the salient terms were these: (1) the purchase money was payable by annual instalments; (2) the purchasers were let into possession pending completion; (3) in the event of default in payment of the instalments (in respect of which time was made of the essence) the vendor was at liberty to rescind the agreement and to retain the instalments already paid. The initial instalment was paid, but default was made in paying the second instalment, whereupon the vendor exercised his contractual right to rescind the contract. The purchasers tendered to the vendor the amount then due, but the vendor refused to accept it. The purchasers then commenced an action against the vendor for specific performance of the agreement, and alternatively for relief from forfeiture of their rights generally under the agreement. The decision of the Judicial Committee was that the purchasers were not entitled to obtain specific performance, because time had been made of the essence and an incurable breach of the agreement had therefore in this respect been committed, but it was held that the purchasers were entitled to be relieved from forfeiture of the instalment of the purchase price already paid. The result of this was that the agreement was validly rescinded by the vendor, according to the terms thereof, but the purchasers recovered what they had paid.

The reason given for this decision is not very clear, but apparently it was that the provision for forfeiture of the instalments paid was in the nature of a penalty and should be relieved against. It was not suggested that, as all that had been paid was an initial payment of about 6 per cent. of the total purchase price, this amount might have been forfeitable as a deposit, all considerations of the forfeiture provisions in the agreement apart. It would seem, however, that the value of the land had increased since the date of the agreement, and that it was the land which the parties were principally anxious to obtain—the vendor by rescission of the agreement and repossession of it free of the agreement, the purchasers by specific performance of the agreement; if that be the true explanation of the parties' underlying motives in this litigation, the claim on the one hand to forfeit and on the other hand to regain the one instalment of purchase money which had been paid was, doubtless, of little importance to either side.

The decision is an obscure one, and it was not (as now appears) made any the less so by the attempt of Farwell, J., to elucidate it in *Mussen* v. *Van Diemen's Land Co.* [1938]

Ch. 253. Farwell, J.'s explanation of the earlier decision was that its basis was the readiness of the plaintiffs (the purchasers) to perform their part of the contract. This explanation has now been rejected by the Court of Appeal, or at any rate a majority of that court, in the case under review. The readiness of the plaintiffs to perform the contract was relevant to their claim for specific performance (in which, as has been seen, they failed), but it could have nothing to do with their alternative claim to relief against the forfeiture of instalments paid (this was the view expressed by Denning, L.J.), or at any rate could not be the only reason why the plaintiffs succeeded on this part of their claim (which was how Somervell, L.J., saw the matter).

In *Stockloser* v. *Johnson* the facts were complicated by reason of there being two separate agreements between the parties, in respect of one of which there was a peculiar incident which led the trial judge to differentiate between the parties' respective rights under that agreement, and their rights under the other agreement. But this differentiation was not accepted by the Court of Appeal, and if one is only concerned with the decision of that court the facts can be greatly simplified. For the present purpose, therefore, it is enough to say that the agreement was an agreement for the sale of certain machinery. The purchase money was payable by instalments, and the agreement provided that if the purchaser made default in paying any instalment the vendor was entitled, on giving notice to rescind the agreement, to retake possession of the machinery, and in that event all payments made thereunder by the purchaser to the vendor should be forfeited to the vendor, who should retain the same. It was further provided that the purchaser should not become the owner of the machinery until all the purchase money was paid, but until then should have the enjoyment of it. Default was made, and the vendor gave notice rescinding the agreement. The purchaser then brought this action claiming the return of instalments already paid.

The Court of Appeal was unanimous in rejecting this claim, but not in agreement over the reasons for this decision. The majority view (that of Somervell and Denning, L.JJ.) may, I think, be found in a passage from the judgment of the latter, to the following effect. First, apart from any forfeiture clause, if money is handed over in part payment of the purchase price, and the purchaser makes default as to the balance, then so long as the vendor keeps the contract open the purchaser cannot at law recover the money paid; but once the vendor rescinds, the purchaser can recover his money by action at law and the vendor is left to a cross action for damages. Secondly, when there is a forfeiture clause or the money is expressed to be paid as a deposit the purchaser who is in default cannot recover the money he has paid by action at law at all; but equity may relieve him from forfeiture, on terms. That is the general position. In practice, it is often difficult to know what circumstances will give rise to the purchaser's equity to recover what he has paid, but two circumstances seem to be necessary. First, the forfeiture clause must be of a penal nature, in the sense that the sum forfeited must be out of all proportion to the damage suffered; and, secondly, it must be unconscionable for the vendor to retain the money. (In another part of his judgment the learned lord justice spoke of this last requirement in terms of the principle of unjust enrichment.)

Applying these principles here, Denning, L.J., thought that, even if the forfeiture clause was of a penal nature (which I think was his view), it was not unconscionable for the vendor to retain the instalments paid. This was also the way that Somervell, L.J., approached the case. But the particular decision is not important: it is the statement of principle that matters. As to this, Denning, L.J.'s analysis of the interplay of law and equity in this field is not without difficulties. As regards the position at law, the forfeiture of a deposit is put on the same plane as the forfeiture of the instalments, and there are obvious analogies between the two. But these are not now complete owing to s. 49 (2) of the Law of Property Act, 1925, which provides, in effect, that wherever specific performance is refused or in any action for the return of a deposit, the court may order the repayment of a deposit. There is, therefore, this statutory equity now, if one may so call it, which seems to override the rules of law laid down by Denning, L.J., where the dispute concerns a deposit. Where the point at issue is instalments and not a deposit (the dividing line between the two may not always be easy to draw) this provision has no application. Secondly, the first of the requirements of equity for relief against forfeiture, that there must be an element of penalty about the provision, must, it seems to me, always, or almost always, be satisfied in the case of a clause for the forfeiture of instalments, for even if there are only two instalments to be paid, default in paying the second must result in the forfeiture, or potential forfeiture, of a disproportionate share of the purchase price. If one looks at the contract *in vacuo*, therefore, a clause of this kind must always, or nearly so, import some penalty. But elsewhere in his judgment Denning, L.J., seems to apply another test—not the quality of the clause in question itself, looked at simply as an instrument capable of imposing a disproportionate loss on the purchaser, but the actual effect of the clause in the particular case under consideration, having regard to the number of instalments paid and their total amount in relation to the whole of the purchase price. If this is so, then the parties are under the inconvenience of not being able to say, or rather obtain advice on the question, whether the contract between them is enforceable in all its terms or not: it all depends on the circumstances at the time.

There is not space here to do more than mention the judgment of Romer, L.J., whose view was that equity cannot relieve a purchaser from the consequences of a contract which the vendor has validly rescinded according to its terms in the absence of fraud or sharp practice or some other unconscionable conduct on the vendor's part. As contracts of the kind under consideration in this case are usually negotiated at arm's length, this is a view which will attract the ready sympathy of the practitioner who is called upon to reduce his clients' bargains to a proper written form. But the general impression of this case, and the authorities referred to in the process of deciding it, is that provisions for the payment of purchase money by instalments are to be avoided, not so much, perhaps, because in a suitable case the forfeiture part of the contract will not be upheld, as because it offers a party in difficulty almost unrivalled opportunities of causing unnecessary delay and expense. And during the period of delay, the party at fault is in possession and enjoyment of the subject-matter of the contract.

"A B C"

Alderman Miss AGNES TWISTON HUGHES, solicitor, of Conway, has been elected the first woman Mayor of the Borough. She has been Deputy Mayor for four years.

Mr. EVAN JOHN LLOYD JONES, assistant solicitor to the Merioneth County Council, has been appointed deputy clerk of the council.

Landlord and Tenant Notebook

THE CASE OF THE LANDLORD'S CATS

READERS can hardly have failed to notice a widely reported case decided in Westminster County Court on 15th March, in which the plaintiff successfully claimed the return of a "deposit" paid to the owner of a shop of which he had intended to become the tenant. Though no point of law arose—the authorities quoted were poets only, one quotation being, incidentally, one of many cited in our "Current Topic" entitled "The Cat and the Law" on 8th April, 1950 (94 SOL. J. 216)—there was a certain novelty about the situation which suggested the possibility of legal difficulties ensuing. The novelty lies in the facts that specific animals were concerned in the dispute, and that the agreement which the plaintiff was invited to sign contained both positive and negative obligations with regard to those animals, which were two cats the property of the defendant.

As far as I know, cats have not actually figured in any reported landlord-and-tenant case. There are, however, a vast number of authorities which show how the parties' interest in, and liking for, or dislike of, animals of specified kinds have been dealt with in leases and tenancy agreements. Beginning with horses: it was held, under the Agricultural Holdings Act, 1923, that a stud farm was not an agricultural holding (*Re Joel's Lease, Berwick* v. *Baird* [1930] 2 Ch. 359). Continuing with sheep: in *Holme* v. *Brunskill* (1878), 3 Q.B.D. 495 (C.A.), it appeared that 700 heath-going such had been let with a farm, the tenant covenanting to maintain the flock and deliver up the same number; the defendant had guaranteed performance; the tenant got into difficulties, the plaintiff, his landlord, gave him notice to quit, then "withdrew" it and agreed to reduce the rent; the tenant then went bankrupt and his trustee delivered up the farm and such sheep as there were to the plaintiff, who sued on the bond. It was held that, not having been consulted about the variation, the defendant was discharged. As to smaller animals, the restrictions imposed by councils and owners of blocks of flats are well known, and one decision, *Bell London and Provincial Properties, Ltd.* v. *Reuben* [1947] K.B. 157 (C.A.) illustrates the importance of the "overriding consideration of reasonableness" in cases in which possession is claimed of controlled property; a nervous tenant was allowed to go on keeping her watch-dog in breach of agreement. When we get down to yet smaller animals, it is usually the tenants and not the landlords who raise objections, and by virtue of implied rather than of express obligations. The landlord in *Stanton* v. *Southwick* [1920] 2 K.B. 642, who was sued for breach of the covenant imported into lettings of low rental dwellings by what is now the Housing Act, 1936, s. 2, would, it appears, have been held liable if the rats complained of by the tenant had lived on the premises; in fact, they entered via a sewer, and the action failed. Then, breach of the covenant for fitness implied in furnished lettings had, perhaps more often than not, concerned the presence on the premises of yet smaller animals. These have been shown to know no discrimination; in *Harrison* v. *Malet* (1886), 3 T.L.R. 58, the defendant in an action for rent was a retired judge (Indian Civil Service) who counter-claimed for, and recovered, damages for annoyance so caused; in the earlier case of *Smith* v. *Marrable* (1843), 11 M. & W. 5, judgment was given for the defendant in an action for use and occupation after she had carried out an intention expressed in an icily polite note to the plaintiff's wife, in these terms: "Lady Marrable informs Mrs. Smith that it is her determination to leave the house in Brunswick Place as soon as she can take another, paying a week's rent, as all the bedrooms occupied but one are so infested with bugs that it is impossible to remain."

But tenants have their responsibilities too. An express covenant to deliver up a house in as good repair and condition as it was in at the commencement of the tenancy has been held to be infringed when the premises (let unfurnished) were found to be infested with bugs on the expiration, the noxious animals having moved in during the term (*Jones* v. *Joseph* (1918), 87 L.J.K.B. 510).

Then, covenants and agreements concerning game have frequently been before the courts; some reflect landlords' anxiety that game shall be left (see *Adams* v. *Clutterbuck* (1883), 10 Q.B.D. 403), others oblige the tenant to keep down game (*Morgan* v. *Griffith* (1871), L.R. 6 Ex. 70).

Not only real, but hypothetical, animals have figured in landlord-and-tenant reports. Expounding the nature of apportionment of rent of controlled premises, Salter, J., drew, in *Phillips* v. *Potter* (1925), 94 L.J.K.B. 819, a picture of a tenant paying rent for a cottage, a cowshed, a pasture field, and the use of a few cows, and pointed out that the interest in the chattels would be a necessary factor in any apportionment that became necessary. But far more has been heard of the late Mr. Merlin's "metaphorical cat" by which he sought to illustrate the nature of adherent goodwill for Landlord and Tenant Act, 1927, Pt. I, purposes; the third edition of his book contains an interesting summary of, and of the author's reply to, the attacks made on that animal by Maugham, L.J., who had pointed out, in *Whiteman Smith Motor Co., Ltd.* v. *Chaplin* [1934] 2 K.B. 35 (C.A.), that a gentle stroke on the back or the promise of a bowl of milk might tempt a cat to leave home; and when the court agreed with those criticisms in *Mullins* v. *Wessex Motors, Ltd.* (1947), 63 T.L.R. 610 (C.A.), Evershed, M.R., said: "... if it is true that a cat has nine lives we express the hope that, in relation to the Landlord and Tenant Act, it has lived its last and may now be decently interred."

The cats concerned in the action at Westminster were actual and specific, and it appeared that the defendant would have sided with Mr. Merlin; he wanted his tenant to (*a*) undertake to feed and look after the animals, and (*b*) allow them the liberty of the shop. I do not think that any precedent exists for provisions designed to carry out this intention: the cats were not being demised, breeding was not contemplated, etc. The negative obligation—the liberty of the shop one (reservation? easement?)—was, Judge Blagden is reported to have said, one which he was glad he would not be asked to interpret. The actual issue was one of fact; whether in the course of negotiations the parties had been *ad idem*; comparing their honest recollections, the learned judge decided that issue in favour of the plaintiff. So far as the law is concerned, we have another example of the recoverability of "deposits" paid when there is no contract, a position exemplified by *Chillingworth* v. *Esche* [1924] 1 Ch. 97 (C.A.).

R. B.

Mr. T. Belk, retired solicitor, of Middlesbrough, left £27,839 (£27,703 net).

Mr. G. E. Foster, retired solicitor, of Leeds, left £19,471 (£19,204 net).

HERE AND THERE

A MATTER OF URGENCY

ONE of the most fascinating things about life is that, as with the Order of the Garter, there is (to borrow the phrase of a very wise nobleman) "no damned nonsense about merit" in it. Moreover, the more you try to iron out anomalies the more unfair it becomes, as even the educationalists are finding out in relation to those intelligence tests which were going to supersede with scientific infallibility the old clumsy instrument of the examination. Without too much sententious interference, life has a way of providing its own solutions in the long run, though not always, it is true, on an inspiration of abstract justice. Thus, even the holders of high judicial office (that depressed and neglected class) are going to get an increase of salary at last, uncriticised and unopposed by the representatives of the railwaymen and the transport workers, though for them it has been a very long and exhausting run indeed. I suppose by this time everybody knows the strange story of the judges' salaries, that not only have they not had a rise since 1825, but that since then they have actually suffered a decrease. In that year they stood at the apex of their fortunes with £10,000 for the Chief Justice of the King's Bench, and £5,500 for the puisnes. Early in the reign of William IV the puisnes lost their odd £500 and the remuneration of the Chief Justice dropped to £8,000. About the same time there was decreed for the office of Lord Chancellor, then shorn of the varied patronage which had hitherto glorified and enriched it, a salary of £10,000 a year. Since then a succession of wars have steadily and unfalteringly raised the price of peace, decade by decade, in terms of prices, wages and values, but the judges of the atomic age have remained, economically, precisely where they were in the days of good King William and the first British railways. It is perhaps undemocratic to suggest that they were entitled to as much consideration as electricians or mine-workers, but in some quarters it was felt that they were entitled to some consideration. All the same, they didn't get it, not for a hundred and twenty years and by then their claim might well have been held to be barred by effluxion of time, but for one relevant factor in the conduct of public affairs. The Members of the House of Commons were desperately in need of a precedent for rewarding their own activities more amply. Did you notice the jet-propelled acceleration of the proceedings of the Select Committee which inquired into the question of payments and allowances to Members? Appointed on 4th November, 1953, it first met on 11th November. Its report was ready for printing on 2nd February, 1954, and on sale a fortnight later. Well, somebody's in a hurry, and borne on the wings of that urgency the Judges' Remuneration Bill has been assured of unimpeded transit through the House. Her Majesty's Opposition will not oppose it and the holders of high judicial office can look forward confidently to an extra £3,000 a year each, all but the Lord Chancellor and the Lord Chief Justice, who will only get an extra £2,000 (though Lord Simonds, by a self-denying ordinance, will not avail himself of the increase).

NATIONAL PRIORITIES

IT must be the first time that the sages of the law have found themselves, albeit unintentionally and by the force of circumstances over which they had no control, in the position of revelling in the political privileges of a pressure group. But, of course, as with everything else in life, there is a price to be paid and the price in this case is the indignity of being used as the first twist in what the economists call a vicious spiral in the cost of living, a new spiral initiated for the benefit of the middle classes. So far the economic emblem of those classes might well have been the long worm that has no turning and it would at least have made a nice change to see it finally raising its head at last like a menacing cobra, but I don't think it will really happen. Once the politicians have eased the economic pressure on the state of life to which they feel themselves entitled, Parliament will find it has more urgent matters to consider than, say, Mr. Millard Tucker's Committee on the Taxation Treatment of Provisions for Retirement. It is extremely interesting that the politicians should so confidently award themselves the particular priority that they do, for, unlike judges, barristers, solicitors, doctors, architects, they alone need no qualifications for their calling, none, that is, except an intimate conviction of their ability to manage other people's business, and that qualification is not so very rare that it is far to seek. If, say, doctors and solicitors went on strike and the day-to-day maintenance of social relations and bodily health were to run to a standstill, it would not be very long before the customers were obliged to come to terms. But if the politicians went on strike, would there really be so very much difficulty in replacing them? And even in the period of transition the Civil Service would probably run so smoothly that nobody would notice the difference. One interesting distinction between the politicians and the other professions is that, while lawyers, say, frankly treat their calling as a means of livelihood, at the same time maintaining their traditional integrity and the sense of the service they owe to the community, they do not feel perpetually obliged to exclaim on the nobility of their ideals and their restless, anxious, sleepless dedication to the spirit of justice. If one's solicitor talked like that one would not be surprised to see him soon occupying an unprofessional position at the Old Bailey. But politicians really do talk like that to their customers. Perhaps the nervous strain involved in convincing themselves actually does demand the comfort of an extra economic prop.

RICHARD ROE.

BOOKS RECEIVED

Archbold's Pleading, Evidence and Practice in Criminal Cases. Thirty-third Edition and First Supplement. By T. R. FITZWALTER BUTLER, of the Inner Temple and Midland Circuit, Barrister-at-Law, Recorder of Newark, and MARSTON GARSIA, of the Middle Temple and South Eastern Circuit, Barrister-at-Law. 1954. pp. cxciv and (with Index) 1691. London: Sweet & Maxwell, Ltd. £4 10s. net. Circuit binding edition, £6 net.

Register of Surveyors, Land Agents, Auctioneers and Estate Agents, 1953–54. pp. lvi and 1134. London: Thomas Skinner & Co. (Publishers), Ltd. £2, post free.

Temperley's Merchant Shipping Acts. Fifth Edition. By The Hon. Sir WILLIAM LENNOX MCNAIR, LL.M., one of Her Majesty's Judges of the Queen's Bench Division, and JOHN PHILIPPE HONOUR, M.A., of Christ Church, Oxford, and of the Middle Temple, Barrister-at-Law. 1954. pp. lxxxii and (with Index) 923. London: Stevens & Sons, Ltd. £5 10s. net.

The Law and Practice of Divorce and Matrimonial Causes. Including proceedings in Magistrates' Courts. Third Edition. By D. TOLSTOY, of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1954. pp. xlviii and (with Index) 503. London: Sweet & Maxwell, Ltd. £2 2s. net.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

HOUSE OF LORDS

TRADE MARK: GEOGRAPHICAL NAME: REGISTRATION

Yorkshire Copper Works, Ltd. *v.* Registrar of Trade Marks

Lord Simonds, L.C., Lord Oaksey, Lord Morton of Henryton, Lord Asquith of Bishopstone and Lord Cohen

25th February, 1954

Appeal from the Court of Appeal (70 R.P.C. 1).

A company, most of the products of which were manufactured in Yorkshire, applied for the registration of the word "Yorkshire" as a trade mark for goods specified as "solid drawn tubes and capillary fittings, all being made of copper or non-ferrous copper alloys." There were in Yorkshire no other manufacturers of such goods. There was evidence filed to establish that the mark had in fact acquired "100 per cent. distinctiveness." The registration was refused and the refusal was upheld by Lloyd-Jacob, J., and the Court of Appeal. The company appealed to the House of Lords.

LORD SIMONDS, L.C., said that the appeal should be dismissed. The facts were not in dispute and the law applicable to them was clearly settled by the authority of the House of Lords. This mark was a geographical name and under s. 9 (1) (*d*) of the Trade Marks Act, 1938, a word, even though it had no direct reference to the character or quality of the goods, could not be registered if it was according to its ordinary signification a geographical name. But under s. 9 (1) (*e*) it might yet qualify for registration if there were such evidence of distinctiveness as the later sub-sections postulated. As regarded subs. (3), it was not necessary to discuss whether the word "may" meant "must" but it was inconceivable as a practical matter that the registrar could ignore either of the factors in subs. (3) (*a*) and (*b*). The position, then, was that the registrar would have to consider both the inherent adaptability to distinguish and the distinctiveness in fact of a geographical name before he made his decision. Distinctiveness in fact was not conclusive: *A. Baily & Co. v. Clark, Son & Morland, Ltd.* [1938] A.C. 557 was fatal to the proposition that it was conclusive. The name "Yorkshire" was not "inherently adapted" to distinguish the company's goods. It was easier to define inherent adaptability in negative than in positive terms. A geographical name could only be inherently adapted to distinguish the goods of *A* when it could be predicated that such a name would never occur to *B* to use in respect of his similar goods.

The other noble and learned lords agreed. Appeal dismissed.

APPEARANCES: *K. E. Shelley*, Q.C., and *J. B. Shelley* (*Woodham Smith, Borradaile & Martin*); *Sir Lionel Heald*, Q.C., A.-G., and *P. Stuart Bevan* (*Solicitor to the Board of Trade*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[1 W.L.R. 554**

PATENT: APPLICATION FOR COMPULSORY LICENCE: APPLICABILITY OF INTERNATIONAL CONVENTION

Parke Davis & Co. *v.* Comptroller-General of Patents, Designs and Trade Marks

Lord Simonds, L.C., Lord Oaksey, Lord Morton of Henryton, Lord Asquith of Bishopstone and Lord Cohen. 11th March, 1954

Appeal from the Court of Appeal ([1953] 2 Q.B. 48; 97 SOL. J. 402).

The appellants had filed patent specifications in the United States and England, pursuant to the International Convention for the protection of Industrial Property; they related to the synthesis of a new medicinal preparation. The British specifications were dated between 1st August, 1951, and 20th May, 1952. British Drug Houses, Ltd., applied to the Comptroller under s. 41 (1) of the Patents Act, 1949, for compulsory licences under the patents, which the Comptroller granted. The patentees then moved the Divisional Court for prohibition, requiring the Comptroller to refrain from considering the application on the ground that his powers under s. 41 (1) were fettered by s. 45 (3), which applied the provisions of art. 5A of the convention to s. 41 (1), so that he had no jurisdiction to entertain the application within three years of the date of the patent. By s. 41 (1) ". . . Where a patent is in force in respect of (*a*) a substance capable of being used as food or medicine; or (*b*) a process for producing such a substance . . . the Comptroller shall, on application made to him by any person interested, order the grant to the applicant of a licence . . . unless it appears to him that there are good reasons for refusing the application." By s. 45 (3): "No order shall be made in pursuance of any application under ss. 37 to 42 of this Act which would be at variance with any . . . convention . . ." By art. 5A: "(2) . . . each of the countries of the Union shall have the right to take the necessary legislative measures to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work . . . (4) In any case, an application for the grant of a compulsory licence may not be made before the expiration of three years from the date of the issue of the patent, and this licence may only be granted if the patentee is unable to justify himself by legitimate reasons . . ." The court refused the order. The Court of Appeal affirmed this decision. The patentees appealed to the House of Lords.

LORD SIMONDS, L.C., and LORD OAKSEY said that they agreed with the opinion which Lord Cohen was about to deliver.

LORD ASQUITH OF BISHOPSTONE said that the point raised was whether or not art. 5A was limited to cases in which there were "abuses" of patent rights within the meaning of that article. It was so limited and the appeal failed. Sub-article (4), having regard to the last three sub-articles, was to be read as applying to situations *ejusdem generis* with those to which the earlier ones applied, viz., cases founded on abuse. "In any case" meant "in any such case." Any doubt was removed by the words which followed: "this licence may only be granted if the patentee is unable to justify himself by legitimate reasons." That meant against the suggestion that he had been guilty of abusing his rights. His lordship agreed with the opinion of Lord Cohen.

LORD COHEN said that Lord Morton of Henryton agreed with his opinion. Sections 37 to 45 dealt with compulsory licences and revocation of patents. Section 37 enabled any person interested to apply for authority to exercise the patent monopoly on a number of grounds, all of which were related to the patentee's own exercise or non-exercise of his monopoly. Sections 38 and 39 dealt with the operation of s. 37. Section 40 enabled any government department to apply on any of the grounds mentioned in s. 37 for the grant to any person specified in the application of a licence under the patent. Section 41 differed from ss. 37 to 40 in that the right to a compulsory licence arose, not by reason of the patentee's exercise or non-exercise of his monopoly, but solely on account of the character of the invention. The appellants admitted that this application was in respect of patents which fell within s. 41, but they alleged that as it was made within three years of the earliest date of issue of any of the patents to which it related, there was no jurisdiction to entertain it because of art. 5 of the convention. The question was whether art. 5A (4) applied only to licences under ss. 37 to 40 or extended to licences under s. 41. The provision in art. 5A (4) that a licence might only be granted if the patentee was unable to justify himself by legitimate reasons was appropriate only to an application for a licence grounded on some act or default of the patentee. The article was referring simply to measures to prevent abuses of monopoly rights and had no reference to the special provisions of English legislation under which a compulsory licence might be granted in respect of substances capable of being used as food or medicine. The appeal should be dismissed.

APPEARANCES: *D. N. Pritt*, Q.C., *K. E. Shelley*, Q.C., and *Guy Aldous* (*Tackley, Fall & Read*); *P. Stuart Bevan* (*Solicitor to the Board of Trade*); *Sir Hartley Shawcross*, Q.C., *J. P. Graham*, Q.C., and *S. Gratwick* (*Bristows, Cooke & Carpmael*).

[Reported by F. H. COWPER, Esq., Barrister-at-Law] **[2 W.L.R. 531**

COURT OF APPEAL

RAILWAY: SAFETY PRECAUTIONS: MAN INJURED AT WORK ON LINE: "RELAYING OR REPAIRING"

Judson *v.* British Transport Commission

Lord Goddard, C.J., Singleton and Hodson, L.JJ.

18th February, 1954

Appeal from Donovan, J.

The Railway Employment (Prevention of Accidents) Act, 1900, s. 1 (1), authorised the making of rules with the object of

reducing the danger incidental to railway service with respect to the subjects specified in the schedule, which included "Protection to permanent way men when relaying or repairing permanent way." By the Prevention of Accidents Rules, 1902, r. 9, "With the object of protecting men working singly or in gangs on or near lines of railway . . . for the purpose of relaying or repairing the permanent way," railway companies must provide persons or apparatus for maintaining a good look-out or giving warning against a train or engine approaching. Rule 234 (*a*) of the North Eastern Railway Company's Rules, 1933 (now the British Railways' Rules, 1950), prescribes the protective action to be taken on the approach of a train by men working on or near the line and para. (*d*) of the same rule directs the action which must be taken by the ganger or man in charge when work is about to be undertaken on or near lines in use for traffic. The plaintiff, a re-layer in the employment of a railway company, and a ganger, under whose directions the plaintiff was working, were walking along a stretch of line to make an inspection to decide what lengths of line would be required for the repairing and relaying of the line on a later day. While so engaged, they were struck by an engine and injured. Neither of the men had followed the directions laid down in r. 234 (*a*) of the British Railways' Rules with regard to stepping clear of all rails on the approach of a train, and the ganger had not taken the action prescribed in r. 234 (*d*) for the posting of a look-out man, nor had he taken steps to see that the plaintiff followed the safety procedure enjoined by para. (*a*). The plaintiff brought an action against the defendants for the alleged breach of their statutory duty under r. 9 of the Rules of 1902, and for negligence, on the ground that the ganger, who was in charge of the work being done, failed to take any steps under r. 9 or r. 234 to protect the plaintiff from danger. Donovan, J., held that the men, while making an inspection, were working "for the purpose of relaying and repairing the permanent way" within the meaning of r. 9 and consequently that there had been a breach of their statutory duty under r. 9. He was of opinion, however, that the plaintiff's accident was entirely due to his own negligence and gave judgment for the defendants. The plaintiff appealed.

LORD GODDARD, C.J., said that the court took a different view from that taken by Donovan, J., in regard to the construction of r. 9. If the rule were read without reference to the Act of 1900, there would be a great deal to say for the view which Donovan, J., took because the men concerned were walking along the line inspecting it as a preliminary to the actual work of relaying and it might be said that what they were doing was "for the purpose of relaying." When the Act was looked at it was clear that that was not, and could not be, the true construction. A reference to the schedule to the Act showed that one of the matters for which a rule might be made was: "Protection to permanent way men when relaying or repairing the permanent way." By no canon of construction could he hold that because two men were walking along a line to see what they would require when they came to repair the line, they were then relaying or repairing the permanent way. The rule must be read with the Act and therefore the words "for the purpose of relaying or repairing" must mean "when relaying or repairing." That seemed to be the obvious construction and, in his view, it was impossible to say that the defendants were in breach of the rule because they did not take the safety precautions for which it called. For exactly the same reasons he was prepared to hold that r. 234 (*d*) of the Railway Rules must be construed in the same way. The obvious meaning of that rule was that when a gang of men was at work on the permanent way, a look-out must be appointed who had to stay in one position. The rule did not contemplate that when workmen were walking along, perhaps for half a mile, making a peripatetic inspection, a stationary watchman was to be appointed. For the above reasons he was of opinion that there had been no breach by the Railway Executive either of the statutory or the domestic rule. It was also alleged that there had been negligence on the part of the ganger in failing to see that the plaintiff complied with the safety directions in r. 234 (*a*). The ganger, however, was not appointed to see that the plaintiff was safe. The plaintiff knew the rules and was accustomed to the kind of work he was doing. He was not directed by the ganger to do what he did, he broke the rule of his own and put himself into a dangerous position. The case of *Stapley* v. *Gypsum Mines, Ltd.* [1953] A.C. 663 was relied on by the plaintiff. It was a decision which he found very difficult to understand but it was, in his view, distinguishable from the present. In his opinion the plaintiff was entirely the author of his own misfortune. Nothing that the ganger did contributed to the accident to the plaintiff and his employers could not be made vicariously liable. Therefore, though for somewhat different reasons from those of Donovan, J., he agreed that the judgment in favour of the defendants was right.

SINGLETON and HODSON, L.JJ., delivered assenting judgments. Appeal dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *W. R. Steer* (*Gibson and Weldon*, for *Thomas Magnay*, Gateshead); *Marven Everett*, Q.C., and *Tudor Evans* (*M. H. B. Gilmour*).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[1 W.L.R. 585**

TITHE REDEMPTION ANNUITY: WHETHER HIGHWAY AUTHORITY "ESTATE OWNER"

Tithe Redemption Commission *v.* Runcorn Urban District Council and Another

Evershed, M.R., Denning and Jenkins, L.JJ.
23rd February, 1954

Appeal from Danckwerts, J. ([1953] 3 W.L.R. 845; 97 SOL. J. 781)

The Tithe Redemption Commission took out a summons to which the defendants were the Runcorn Urban District Council, a local highway authority in which certain highways were vested under the Local Government Act, 1929, and Imperial Chemical Industries, Ltd., the owners of the surrounding and subjacent soil. The question raised was whether the council concerned was the "owner" of the highways within the meaning of s. 17 (1) of the Tithe Act, 1936, so as to be liable to contribute to the payment of a tithe redemption annuity on an apportionment being made under s. 10 of the Act. Danckwerts, J., held that the Runcorn Urban District Council had a legal estate in fee simple in the surface of the highway, and thus was the "owner" of the highway in the relevant sense, and, as such, liable to contribute to the tithe redemption annuity. The council appealed.

EVERSHED, M.R., said that *Rolls* v. *Vestry of St. George the Martyr, Southwark* (1880), 14 Ch. D. 785; *Mayor, etc., of Tunbridge Wells* v. *Baird* [1896] A.C. 434; 12 T.L.R. 372; and *Foley's Charity Trustees* v. *Dudley Corporation* [1910] 1 K.B. 317 constituted binding authority that as a result of the statutory vesting of the highway in the council, if the vesting had been before 1926, the council would have acquired a legal estate, that is a fee simple determinable, and if the Tithe Act, 1936, had then been enacted would have been liable to the tithe redemption annuity. The interest was not a fee simple within s. 1 of the Law of Property Act, 1925, but as the Local Government Act, 1929, came within the category of a "similar statute" to the Lands Clauses Acts and the School Sites Acts it was by s. 7 (1) of the Law of Property Act, 1925, a "fee simple" for the "purposes of this Act." That category of "similar" statutes comprised all statutes which vested property in a body for public purposes, with a proviso, express or implied, that such interest should determine if the property should cease to be required for those purposes; and accordingly, the Runcorn Urban District Council was the estate owner in respect of the fee simple of the highway and liable to pay the appropriate proportion of the tithe redemption annuity.

DENNING and JENKINS, L.JJ., agreed. Appeal dismissed. Leave to appeal.

APPEARANCES: *Charles Russell*, Q.C., and *R. E. Megarry* (*Ponsford and Devenish* for *T. J. Lewis, Clerk to the Runcorn Urban District Council*); *Geoffrey Cross*, Q.C. and *W. F. Waite* (*Solicitor, Tithe Redemption Commission*); *R. L. Stone* (with him *J. B. Morcom*) (*J. W. Ridsdale*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 518**

BUILDING: DEMOLITION OF GAS RETORTS SURROUNDED BY BRICK ARCHES: COLLAPSE OF ADJOINING WALL: FATAL ACCIDENT

Knight *v.* Demolition and Construction Co., Ltd. Ransome *v.* The Same

Somervell, Birkett and Romer, L.JJ. 24th February, 1954

Appeal from Parker, J. ([1953] 1 W.L.R. 981; 97 SOL. J. 507)

In the course of demolition of blocks of gas retorts housed in vertical columns, surrounded by brickwork and surmounted by heavy brick arches, demolition contractors had adopted a system of work in use in the trade and had provided adequate supervision and visual inspections by a competent person. While two workmen were employed in clearing away debris from under

an arch, the outer wall of which had been demolished, the adjoining wall fell and both were killed. On the trial of actions by their widows under the Fatal Accidents Act, 1864, and the Law Reform (Miscellaneous Provisions) Act, 1934, in June, 1953, Parker, J., negatived allegations of lack of supervision and failure to inspect the wall by a person competent to do so, but held that the defendants were, nevertheless, in breach of their common-law duty to their employees. In case he should be held to be wrong as to breach of common-law duty, the judge held that the defendants were also in breach of the Building (Safety, Health and Welfare) Regulations, 1948, reg. 79. The case was reported only on the latter point before Parker, J.

The COURT OF APPEAL held that the demolition contractors, having failed to direct their minds to foreseeable and special dangers, which ought to and could have been guarded against, were in breach of their common-law duty to their employees. The judgment of Parker, J., being affirmed on this point, the court did not deal with the construction of reg. 79 of the Building (Safety, Health and Welfare) Regulations, 1948. Appeal dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *M. Jukes* (*J. F. Coules & Co.*); *C. N. Shawcross*, Q.C., and *R. Castle-Miller* (*Darracotts & Tringhams*); *G. Gardiner*, Q.C., and *G. Dare* (*Hepburns*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 563

FURNISHED LETTING: RENT IN EXCESS OF REGISTERED RENT: AMOUNT RECOVERABLE

Henry *v.* Taylor

Evershed, M.R., Denning and Morris, L.JJ. 26th February, 1954

Appeal from Croom-Johnson, J.

On 22nd January, 1953, the defendant, Mrs. Ann Taylor, let to the plaintiff, Miss Veronica Henry, a furnished room at 35 Manchester Street, in the Borough of Marylebone, at the rent of £2 15s. a week. On 13th April, 1953, the plaintiff moved to another furnished room in the same house, paying the same weekly rent of £2 15s. On 11th May, 1953, the plaintiff gave up possession of the second room. At all material times the sum entered on the register kept by the Metropolitan Borough of St. Marylebone pursuant to the provisions of the Furnished Houses (Rent Control) Act, 1946, as being the rent payable for the first room let to the plaintiff was £2 10s. per week; and the rent payable for the second room let to her was £1 18s. per week. The plaintiff claimed to recover the sum of £38 10s., being the total amount of rent which she had paid. The defendant admitted that the plaintiff had made overpayments amounting to £1 19s. 6d. and repaid that sum. Croom-Johnson, J., gave judgment for the plaintiff for £36 10s. 6d., being the full amount of her claim less the sum of £1 19s. 6d. which the defendant had repaid. The defendant appealed.

EVERSHED, M.R., said only the sum representing the difference between the registered rent and the rent actually paid was recoverable under s. 4 (2) of the Furnished Houses (Rent Control) Act, 1946.

DENNING, and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. W. Borders* (*F. R. Earle*); *S. K. de Ferrars* (*S. H. White*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 601

PRACTICE: ADJOURNMENT PENDING DECISION OF HOUSE OF LORDS IN SIMILAR CASE

In re Yates' Settlement Trusts; Yates *v.* Yates

Evershed, M.R., Denning and Romer, L.JJ. 1st March, 1954

Appeal from Harman, J.

On 8th February, 1954, Harman, J., adjourned an application for the approval of the court to a scheme of family arrangement on matters relating to the trusts of a settlement made in 1938. The ground for the adjournment was that Harman, J., considered that the case appeared to be similar to *In re Chapman's Settlement Trusts* [1953] Ch. 218, which had about that time come before the House of Lords on appeal; and he accordingly adjourned the case pending the giving of the opinion of the House of Lords in *In re Chapman, supra*. The settlor's two sons appealed against the adjournment, contending first that the case was not analogous to *In re Chapman, supra*; and, secondly, that the law should be applied as it was at present and without waiting for the opinion of the House of Lords to be given. If the scheme was to be effective, it was necessary for the settlor to be alive at the date when the scheme was approved, if it was approved; and evidence was adduced showing that he was in a precarious state of health. It was submitted that injustice might result if the adjournment was continued.

EVERSHED, M.R., said, referring to *Hinckley and South Leicestershire Permanent Benefit Building Society* v. *Freeman* [1941] Ch. 32, that the Court of Appeal had jurisdiction to review the judge's decision to adjourn a case or to refuse an adjournment, although the court would be reluctant to interfere with his decision since this was a matter within his judicial discretion. In proper cases it might well be in the public interest to postpone deciding a case if it was known that a similar case was before the House of Lords, and if the judges of the Chancery Division had concluded that, pending the decision of *In re Chapman, supra*, applications in similar cases should be adjourned, *prima facie*, that was a matter for their decision. However, on the facts of this case, having regard to the injustice which might result from a continued adjournment, and to the possibility that *In re Downshire Settled Estates* [1953] Ch. 218, which was decided with *In re Chapman, supra*, but was not subject to appeal to the House of Lords, might apply, the case should be heard and determined by the judge without waiting for the opinion of the House of Lords.

DENNING, and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Raymond Jennings*, Q.C., and *J. A. Brightman*; *H. Lightman*; *J. Plowman*; *J. A. Wolfe* (*Bulcraig & Davies*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 564

AGRICULTURAL HOLDING: ARBITRATION OF RENT PAYABLE: "DATE OF REFERENCE"

Sclater *v.* Horton

Evershed, M.R., Denning and Romer, L.JJ. 2nd March, 1954

Appeal from Lewes County Court.

On 26th September, 1949, the landlord of an agricultural holding let on a yearly tenancy commencing on 29th September served on the tenant a notice pursuant to s. 8 (1) of the Agricultural Holdings Act, 1948, to refer to arbitration the rent payable as from 29th September, 1950. No reference was made, however, until three years later, when on 26th September, 1952, the landlord served another notice under the section, demanding that the rent payable from 29th September, 1953, should be referred to arbitration. The same day he applied to the Ministry of Agriculture and Fisheries to appoint an arbitrator, and on 24th October, 1952, the Minister appointed an arbitrator. The terms of appointment did not specify whether the arbitrator was appointed with reference to the first or the second notice. The question was raised at the hearing before the arbitrator and he stated a case for the opinion of the county court. Judge Andrew held that the arbitrator was not entitled to deal with the rent for the earlier period to which the first notice related, but that he should proceed to arbitrate the rent payable as from 29th September, 1953. The landlord appealed.

EVERSHED, M.R., said that, on the true construction of s. 8 (1) of the Act of 1948, the date on which the appointment of the arbitrator became effective, that is, the "date of reference," must precede the "next ensuing day on which the tenancy could have been determined" after service of the notice demanding a reference to arbitration. The arbitrator, therefore, was not entitled to consider the rent for the earlier period to which the notice of 26th September, 1949, had related, but should determine the rent payable as from 29th September, 1953, by reference to the facts as at 24th October, 1952, the date of the reference.

DENNING, and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Cecil Binney* (*Adams*); *C. J. S. French* (*Nye & Donne*); *B. S. Wingate-Saul* (*Solicitor, Ministry of Agriculture and Fisheries*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 566

RENT ACTS: PREMIUMS: "REASONABLE PRICE" FOR FURNITURE PURCHASED BY TENANT

Eales *v.* Dale and Another

Evershed, M.R., Denning and Romer, L.JJ. 3rd March, 1954

Appeal from West London County Court.

In January, 1952, the first defendant, Peter Dale, who was the statutory tenant of premises within the protection of the Rent Acts, known as 55 Warwick Gardens, W.14, agreed to let

to the plaintiff, Mrs. Eales, the second-floor flat of the premises. The flat contained furniture belonging to the second defendant, the wife of the first defendant, which the plaintiff agreed to purchase for £500 against the advice of her solicitor. The price was agreed on an itemised and priced inventory, which the county court judge found was fully and fairly agreed between Mrs. Eales and Mrs. Dale. The plaintiff entered into possession of the flat, but subsequently she brought proceedings against the defendants, alleging that the reasonable price of the furniture was £75 (subsequently this sum was increased to £180) and that the difference between that sum and the price which she had agreed to pay was a premium unlawfully required as a condition of the grant of the tenancy. The county court judge held that on the facts the price paid was in all the circumstances reasonable. The tenant appealed.

EVERSHED, M.R., said that the reasonable price for the purposes of s. 3 of the Landlord and Tenant (Rent Control) Act, 1949, was not a fixed standard, and though the market value of the articles, if they had a market value, was an indication of the reasonable price to pay for them, it would not necessarily be conclusive. Nor was the reasonable price the price which would be realised if the articles were removed from the premises and sold in an auction room. All the circumstances relevant to the value of the furniture fitted and situated in the premises must be considered, but there should be excluded from the price any inflation of the value attributable to extraneous circumstances such as the desire of the tenant to obtain a tenancy. On the facts as found, it could not be said that the county court judge had erred in deciding that the price paid was reasonable.

DENNING, L.J., said that "the reasonable price" was the price which it would be reasonable to expect would be agreed between an incoming tenant who was ready to take the articles and an outgoing tenant who was ready to leave them there.

ROMER, L.J., agreed. Appeal dismissed.

APPEARANCES: *Peter Boydell* (*Galbraith & Best*); *Derek Wheatley* (*How, Davey & Lewis*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 593

ROAD TRAFFIC: COLLISION AT CROSS-ROADS: NO DIRECT EVIDENCE: INFERENCE TO BE DRAWN

France *v.* Parkinson

Somervell, Birkett and Morris, L.JJ. 5th March, 1954

Appeal from Croom-Johnson, J.

Two motor cars proceeding along cross-roads of equal status were in collision in about the centre of the crossing. The plaintiff's car was being driven by a man who had hired it and who, having apparently given a false name, disappeared after the collision. The other car was being driven by a servant of the defendant. In an action for damages the plaintiff, being unable to call the hirer of his car, had to rely on the evidence of the police as to the position of the cars after the collision and as to a statement by the defendant's driver to the police that "I was going along the road and we met in the middle." Counsel for the defendant submitted that he had no case to answer and did not call any evidence. The trial judge held that the plaintiff had not proved his case and dismissed the action. The plaintiff appealed.

SOMERVELL, L.J., said a similar problem had arisen in *Baker* v. *Market Harborough Co-operative Society, Ltd.* [1953] 1 W.L.R. 1472; 97 SOL. J. 861, when both drivers were killed in a collision, and the Court of Appeal held that the balance of probabilities was that both were to blame. A collision at cross-roads of equal status was, in the absence of special circumstances, a case where the balance of probabilities was in favour of both drivers having been negligent, particularly having regard to the place of collision, and to the statement made to the police. As his car was being driven by the hirer, the plaintiff was in the same position as a passenger, so that, even if the hirer had been negligent, the plaintiff could recover his full damages if he could establish some negligence on the defendant's part. There was a *prima facie* case against the defendant, on which the court should have found him negligent in the absence of any evidence given by him.

BIRKETT and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *P. M. O'Connor* and *E. W. Eveleigh* (*Hewitt, Woollacott & Chown*); *D. P. Croom-Johnson* (*Barlow, Lyde and Gilbert*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 581

BILL OF COSTS: RUBBER STAMP "SIGNATURE": WHETHER SUFFICIENT

Goodman *v.* J. Eban, Ltd.

Evershed, M.R., Denning and Romer, L.JJ. 5th March, 1954

Appeal from Marylebone County Court.

The plaintiff, a solicitor practising under a business name, sought to recover £50 9s. 6d. for professional services rendered to the defendant company. The plaintiff had sent to the defendants a bill of costs accompanied by a letter which bore a facsimile of the plaintiff's business name in the plaintiff's handwriting impressed on it by a rubber stamp. It bore no other signature. The plaintiff had himself affixed the stamped signature to the letter. The defendants contended that the requirements of s. 65 (1) of the Solicitors Act, 1932, had not been fulfilled. The county court judge gave judgment for the plaintiff and the defendants appealed.

EVERSHED, M.R., said that as a matter of practice, in the absence of some incapacity on the part of a solicitor, the use of a rubber stamp to sign a bill of costs, or the letter accompanying it for the purpose of satisfying s. 65 (2) of the Act of 1932, was not desirable since such a method of signing did not carry with it the same authority or warrant of responsibility as a written signature. For the purposes of s. 65 of the Act of 1932 the letter had been "signed" by the facsimile representation of the plaintiff's signature. He followed *Bennett* v. *Brumfitt* (1867), L.R. 3 C.P. 28, and *In the Goods of Jenkins* (1863), 3 Sw. & Tr. 93. Although the signature was in the plaintiff's business name, it was a good signature by the plaintiff for the purposes of the statute, but it would be prudent practice for a solicitor to add his own name to that of the name of the business. His lordship doubted whether a typed or printed representation of the solicitor's name or that of his firm would satisfy the requirements of the section.

DENNING, L.J., dissented. The authorities relied on were distinguishable, for the documents there in question did not require a personal signature. Ever since 1605, his lordship said, a solicitor's bill had been required to be "subscribed with his own hand and name" (see 3 Ja. I, c. 7, s. 1) and that did not include a facsimile signature which could be affixed by anyone. The Solicitors Act, 1932, consolidated but did not alter the law.

ROMER, L.J., agreed with Evershed, M.R. Appeal dismissed.

APPEARANCES: *M. O'C. Stranders* and *Malcolm Milne* (*G. Lebor and Co.*); *Leonard Halpern* (*Goodman, Monroe & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 581

POWER OF APPOINTMENT: WHETHER REVOCATION OF APPOINTMENT A FRAUD ON POWER

***In re* Greaves; Public Trustee *v.* Ash**

Evershed, M.R., Denning and Jenkins, L.JJ. 5th March, 1954

Appeal from Vaisey, J. ([1953] 3 W.L.R. 987; 97 SOL. J. 832)

A testator, who died in 1934, directed that (after the death of his wife) the whole of the income of a trust fund should be held on trust for his daughter for life, and he conferred on her a power of appointment among her children or remoter issue in such manner as she should by deed revocable or irrevocable or by will or codicil appoint. On 30th May, 1938, the daughter executed a deed of appointment (reserving therein a right to revoke the appointment). In or about 1950, after the death of the testator's wife, a scheme was suggested to the daughter, and to her adult daughters, for a partial distribution of the capital of the trust fund. In order to carry out the scheme, she executed in February, 1952, a deed of revocation of the appointment of 30th May, 1938, and a deed releasing her power of appointment among issue. The scheme, which depended on the deed of revocation, would have had the effect of placing her in possession of large capital funds. The Public Trustee, as trustee of the will, took out a summons to ascertain (1) whether the exercise of a power of revocation was within the doctrine of a fraud on the power; and (2) whether, in the circumstances, the particular revocation of the power of appointment was or was not a fraud on the power. Vaisey, J., held that the exercise of the power of revocation was within the doctrine, and that the scheme, however meritorious, was a fraud on that power. The testator's daughter, the donee of the power, appealed.

EVERSHED, M.R. (delivering the judgment of the court), said that the vice constituting a fraud on a power was that the appointor assumed the burden of selecting amongst the class of potential appointees (a burden which he was under no duty

to assume, whatever might be his motives in abstaining) instead of allowing the persons to take who would have been entitled in default of appointment, and then distorted the purposes of the power for the benefit of a person not within the class of appointees. As there was no duty to assume the burden of appointing, so there was no duty attaching to a release of the power, or to the revocation of a revocable appointment. The fiduciary duty attached to the exercise of the power of appointment was owed to the persons who would have taken in default of appointment, but that duty did not apply to a revocation, for a revocation could not injure them; and the potential appointees could not complain if the appointor chose to exercise his right to revoke the appointment he had made, for it was expressly made revocable. *In re Jones' Settlement* [1915] 1 Ch. 373 was wrongly decided. The decision that exercise of a power of revocation was not within the doctrine of a fraud on the power would not, however, necessarily apply to every revocation, for there might be cases where a power to revoke previously declared trusts was so closely related to a power of re-appointment that the validity of the revocation would be dependent on the validity of the re-appointment. Appeal allowed.

APPEARANCES: *L. M. Jopling* (*Vertue & Churcher*); *W. S. Wigglesworth* (*Woodcock, Ryland & Co.*, for *Tweedale, Sons & Lees*, Oldham); *W. F. Waite* (*Kingsford, Dorman & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 557**

COMPANY: VALUATION OF SHARES UNDER ARTICLE: AUDITOR'S OPINION

Dean *v.* Prince and Others

Evershed, M.R., Denning, L.J., and Wynn Parry, J.
8th March, 1954

Appeal from Harman, J. ([1953] Ch. 590; 97 SOL. J. 490)

The articles of association of a company, known as Dean and Mulhall, Ltd., carrying on a light engineering business in Sheffield, provided that a deceased director's share should be purchased by the surviving directors at a price to be certified by an auditor as a fair value. The paid-up capital of the company consisted of 200 shares of £1 each, 140 of which were held by a Mr. Dean, a director of the company, and 30 by each of the two other directors. In 1951, Mr. Dean having died, the auditor was asked to value Mr. Dean's holding in the company in accordance with the articles. He made a certified valuation and stated in writing that for the purpose of his valuation he had not regarded the company as a going concern but that he had valued on a "break-up" basis, because in his opinion the shares had no value on any other basis, having regard to losses made by the company over a period of six years prior to the valuation. On appeal from Harman, J., who held that the valuation was invalid and not binding because the auditor had proceeded on the wrong basis, and also because he had not attributed any special value to the shares in question although they carried control of the company:

EVERSHED, M.R., said that, in considering whether the auditor's valuation was impeachable, the test was, as stated in *Collier* v. *Mason* (1858), 25 Beav. 200, at p. 204, whether he had made a mistake of a substantial character or had materially misdirected himself. Applying that test, his lordship did not think that the valuation was invalid. The auditor was right in not attributing a special value to these shares in excess of the value of the company as a whole divided rateably amongst all the shares equally. He had also rightly rejected the "going-concern" basis of valuation, as the company had no expectation of profit-making. He had erred in attempting to value according to "accountancy principles," for this valuation was not a mere arithmetical process but must be made in the light of all the circumstances applicable to the particular company. He ought, therefore, to have considered the possibility of a sale of the company's assets *in situ* to a purchaser who would carry on his own business there through the existing company. Having regard, however, to the unattractive nature of the company's interest in the premises in which its business was carried on, it could not be said that that was a material mistake or error of principle which vitiated his valuation.

DENNING, L.J., agreed that the valuation was valid and binding. His lordship said that the auditor had not erred in ignoring the value to a special purchaser who would turn out the company, for this was a forced sale to the directors on the assumption that they would continue in business.

WYNN PARRY, J., agreed. Appeal allowed. Leave to appeal refused.

APPEARANCES: *J. G. Strangman*, Q.C., and *D. S. Chetwood* (*Allen & Overy*); *H. E. Francis* (*J. R. Pullon, Walters & Co.*, for *Elliott and Slater*, Sheffield).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] **[2 W.L.R. 538**

CHANCERY DIVISION

WILL: WHETHER "ISSUE" TO TAKE GIFT TO "CHILDREN": ACCRUER CLAUSE: WHETHER ACCRUING SHARE INCLUDED IN GIFT OF "SHARE"

***In re* Lybbe, deceased; Kildahl *v.* Bowker**

Roxburgh, J. 26th January, 1954

Adjourned summons.

By his will, a testator left his residuary estate to *A* for life and after her death in trust for such of her children living at his death and attaining the age of twenty-one years, or if female marrying, as she should appoint and in default of appointment in equal shares. In 1883, he settled property on trust to pay the income of it as in the settlement provided during the lives of *A*, himself and the survivor of them and thereafter in trust for such of *A's* children, *B*, *C* and *D*, and of such other persons if any as the testator should by deed, will or codicil appoint, and in default of appointment in trust for such of *B*, *C* and *D* as should attain twenty-one years of age or marry if more than one in equal shares. By a codicil made in 1887 reciting that *C* had recently married, the testator appointed the settled property to be held after *A's* and his own death on trust for such of *B*, *C* and *D* as should be living at his death in equal shares, on trust to pay the income of one such equal share to each of *B*, *C* and *D* for life or until forfeiture: and he directed the trustees, after the decease of any of *B*, *C* and *D*, to "stand possessed of the share of the person so dying . . . upon trust in equal shares for . . . the children of such person living at the time of such person's decease who . . . attain the age of twenty-one years or being female . . . marry . . . and for all or any of the issue living at that time on attaining twenty-one or marrying of any child of the person so dying who dies in the lifetime of such person leaving issue living at the time of such person's death . . . and . . . if there shall be no child or other issue of the person so dying . . . who attains a vested interest under the trusts lastly hereinbefore contained . . . the share of the person so dying shall be held on trust for the benefit of *B*, *C* and *D* or the survivor or survivors of them or of their children on trusts similar to the trusts hereinbefore declared with regard to [the settled fund] so far as may be and the law will allow." In 1897 the testator died, in 1919 *A* died and in 1922 *B* died without having been married. In 1945 *C* died, predeceased by her only child, a son, and survived by five grandchildren, all twenty-one years old at the date of this summons. In 1953 *D* died leaving a will, without having been married. A summons was issued to determine whether the property subject to the trusts of the settlement was held in trust for *C's* grandchildren or for residuary legatees under *D's* will or how otherwise.

ROXBURGH, J., said that the first question was whether "issue" could take *D's* original share under the ultimate trust in the codicil, which used the word "children" only. In using the word "similar," the testator meant that the trusts were to be modified only so far as the law required; had the meaning been different, the disposition would probably have been void for uncertainty. The question was whether "similar" meant that the trusts previously declared in favour of children and issue had to be modified so as to exclude issue, or that the preceding trusts, which were not accurately set out again, were to prevail so far as the law would allow. The determining factor was that the gift to children and issue was a gift to a composite class, and it was impossible to give effect to the gift for children in the ultimate class without at the same time giving effect to the gift for issue; if the gift had been to children with substitution of "the issue of deceased children" for "children deceased at the time of distribution," the decision would have been the other way. It was a case of impression, and there would be a declaration that with regard to *D's* original share the issue could take under the ultimate trust. The second question was whether the word "share" in the accruer clause included an accruing share as well as an original share. The question concerned an alleged second accruer on the death of *D*; there had been a first accruer on the death of *B* without issue, whereby no doubt both the shares of *C* and *D* were augmented. In *In re Allan* [1903] 1 Ch. 276

it was recognised that *prima facie* "share" did not mean an accruing share. It was difficult to understand or to derive a principle from that case, but it appeared that the court found a context in that testator's will indicating that he did not mean to die intestate as to any part of his residue. In the present case, although no doubt the testator did not mean to exhaust his power of appointment, there was no context enabling the court to depart from the natural meaning of the word. The testator probably overlooked the possibility of a second accruer. Accordingly, *D's* accrued share went in default of appointment. Declaration accordingly.

APPEARANCES: *J. V. Nesbitt* (*Field, Roscoe & Co.*, for *Pye-Smith, Hulbert & Kildahl*, Salisbury); *W. A. Bagnall* (*Blyth, Dutton, Wright & Bennett*); *M. J. Albery* (*Robbins, Olivey & Lake*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 573

COMPANY: WINDING UP: SUMS ADVANCED AFTER PETITION TO ENABLE COMPANY TO CARRY ON BUSINESS

***In re* T. W. Construction, Ltd.**

Wynn Parry, J. 1st March, 1954

Motion.

On 25th March, 1952, a company asked their bankers for a temporary overdraft of £1,000 to finance an export order, and produced documentary credits. On 4th April the bank confirmed the overdraft. On further requests by the company, the bank extended the overdraft to £1,200 over 12th May. On 7th May, a petition was presented for the winding up of the company. On further representations by the company, the bank extended the overdraft until the credit in favour of the company should be met, and allowed the company to draw two cheques for wages. On 21st May, £1,308 was paid to the bank in respect of the transactions by a third party. On 22nd May, the bank first became aware of the petition. On 23rd June, a winding-up order was made. A summons having been taken out by the liquidator for the repayment to him by the bank of the sum of £1,308, the registrar made an order that the bank should repay to the liquidator the sum of £803, that being the amount standing to the debit of the account on 3rd May, 1952, which was the last entry before the date of the petition. The bank appealed against the registrar's order. By s. 227 of the Companies Act, 1948: "In a winding up by the court, any disposition of the property of the company, including things in action . . . made after the commencement of the winding up, shall, unless the court otherwise orders, be void."

WYNN PARRY, J., said that it appeared from *In re Steane's (Bournemouth), Ltd.* [1950] 1 All E.R. 21 and *In re the Repertoire Opera Co.* (1895), 2 Manson 314, that the court had an absolute discretion under the section. In *In re Wiltshire Iron Co.* (1868), L.R. 3 Ch. 443, Lord Cairns said that where a company actually trading, which it was everyone's interest to preserve and sell as a going concern, was made the subject of a petition, if *bona fide* transactions in the ordinary course of trade were to be avoided, the result would be that the presentation of a petition, groundless or not, would do great injury without any counteracting advantage to those interested in the assets. The present transaction fell directly within those words, and there was no ground for distinguishing between the balance of the overdraft existing immediately before the petition, and the final balance. The bank were accordingly at liberty to retain the sum of £1,308. Appeal allowed.

APPEARANCES: *C. R. D. Richmount* (*Durrant Cooper and Hambling*); *F. Hallis* (*Booth & Blackwell*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 540

CHARITY: SOCIETY FOR CONDUCTING EXCAVATIONS IN EGYPT AND PUBLISHING WORKS: FAILURE OF OBJECTS: WHETHER RESULTING TRUST FOR SUBSCRIBERS

***In re* British School of Egyptian Archæology; Murray *v.* Public Trustee**

Harman, J. 5th March, 1954

Adjourned summons.

A society was founded in 1905 by the well known archæologist, Sir Flinders Petrie, who became honorary director. The society's regulations provided: "3. The objects of this association shall be any or all of the following: A. To conduct excavations and to pay all expenses incidental thereto. B. To discover and acquire antiquities and to present the same to public museums. To hold exhibitions when practicable. C. To publish works. D. To promote the training and assistance of students. All of these objects shall be carried on in relation to Egypt, and any part of the former Kingdom of Egypt. Exceptions may be considered. 4. All money received by contribution, bequest or sales of books, shall be applicable to the above purposes only . . . 9. All contributions of one guinea or two guineas annually . . . shall receive the corresponding publication of work free. Those who contribute a larger amount annually or at once shall receive a corresponding value of publication when such be issued, or antiquities may be allocated to such public museums as they desire." The society was active in the field for many years; excavations were carried out under the supervision of the director, and a large number of works were published. In 1939, war put an end to activities in the field. Sir Flinders Petrie died in 1942. Since then nothing was done except to publish a number of manuscripts left by Sir Flinders Petrie. In 1951 it was decided to publish one more work, and wind up the society. Questions then arose whether the society's funds were held on charitable trusts and whether there was a resulting trust in favour of the subscribers. The committee were desirous, if possible, to devote the funds to the foundation of a scholarship in Egyptian archaeology in memory of Sir Flinders Petrie. A summons was taken out for the determination of these questions.

HARMAN, J., said that the first question was whether the society was charitable. The objects showed that it was a body whose funds and objects were devoted to the discovery of knowledge connected with ancient Egypt, to publishing works in that connection, and to the training of students in the craft of excavation. Two objections had been raised. It was first said that there was no obligation to diffuse the knowledge outside the ranks of the society itself, so that no benefit was conferred on the public. But the objects clearly showed an intention of making the knowledge public. Secondly, it was said that to "publish works" might mean any works. But read properly in the context, the "works" to be published were works discovering to the public the results of the excavations. There could be no doubt that the society existed for the diffusion of knowledge of ancient Egypt, and also had a direct educational purpose, namely, the training of students. On the question whether there was a resulting trust, it was said that the relationship between the society and the contributors was contractual; that the society was to supply books in return for the contributions. But the contributions were to be devoted to the objects of the society; the only contract was to supply contributors with such works as the society decided to publish; there was no obligation on the society either to continue to publish works, or to return the money. The contributors must be taken to have parted with their money once and for all, and no resulting trust arose. In the result, it would be referred to chambers to settle a scheme for the foundation of a scholarship in Egyptology associated with the name of Sir Flinders Petrie.

Declaration accordingly.

APPEARANCES: *W. J. C. Tonge*; *P. C. Lucking* (*Pyke, Middleton & Brown*); *J. P. Hunter-Brown* (*Powell, Skues and Graham Smith*); *Denys Buckley* and *N. S. Warren* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 546

[Companies Court]

PRACTICE DIRECTION

COMPANY: MOTION: INVESTIGATION OF AFFAIRS OF COMPANY: NOTIFICATION OF BOARD OF TRADE

12th March, 1954

By direction of the judges.

In the case of an application by originating motion under Ord. 53B, r. 7 (*c*), of the Rules of the Supreme Court, for a declaration that the affairs of a company ought to be investigated under s. 165 of the Companies Act, 1948, the notice of motion need not be served on the Board of Trade, but notice of intended application should be sent to the Solicitor of the Board of Trade together with copies of any affidavits intended to be used at the hearing. Evidence should be filed proving that this direction has been complied with.

J. T. WILSON,
Registrar.

[1 W.L.R. 563

QUEEN'S BENCH DIVISION

NEGLIGENCE: TRESPASSING CHILD INJURED BY COLLAPSE OF WALL UNDER DEMOLITION: LIABILITY OF CONTRACTORS

Davis *v.* St. Mary's Demolition and Excavation Co., Ltd.

Ormerod, J. 21st December, 1953

Action.

The plaintiff, a boy of twelve, was injured when on a Sunday, in company with other boys, he went on to a site where demolition work was being carried out by the defendants under contract with the owners, and with a piece of gas piping loosened some bricks in a wall causing it to fall on him. The site was readily accessible from a neighbouring open space where children were in the habit of playing, but they were always ordered off the site of the demolition by the defendants' servants.

ORMEROD, J., found that the defendants were negligent in leaving the wall in an unsafe condition, but that the plaintiff was a trespasser. He said that admittedly the defendants were not the occupiers of the site; if they had been occupiers, they would not ordinarily have been liable to a trespasser, as was laid down in *Robert Addie & Sons' Collieries, Ltd.* v. *Dumbreck* [1929] A.C. 358. The plaintiff contended that the defendants, not being occupiers, owed him a duty as laid down by Lord Atkin in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 580, when he said: "You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation" when doing the act concerned. Applying that test, the defendants well knew that small boys habitually were coming on to the site, and should have appreciated that they were likely to interfere with the brickwork. Their presence on the site was so likely that the plaintiff was a "neighbour," as defined by Lord Atkin, and the defendants should have taken the necessary precautions. Judgment for the plaintiff.

APPEARANCES: *J. Platts-Mills* and *S. J. Waldman* (*W. H. Thompson*); *G. R. F. Morris* and *P. Crawford* (*Hair & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 592

CUSTOMS: ACTION FOR FORFEITURE OF GOODS: LIMITATION

Commissioners of Customs and Excise *v.* Trustee of the Property of Sokolow (a Bankrupt)

Hilbery, J. 5th March, 1954

Motion.

Section 257 of the Customs Laws Consolidation Act, 1876, provides that "all suits, indictments or informations brought or exhibited for any offence against the Customs Acts in any count . . . shall be brought or exhibited within three years next after the date of the offence committed." Before 31st March, 1949, certain securities, the import of which was prohibited by s. 21 of the Exchange Control Act, 1947, were brought into the United Kingdom and became liable to forfeiture by virtue of s. 177 of the Customs Laws Consolidation Act, 1876, which applied to them. In August, 1952, the Commissioners of Customs and Excise seized them and gave statutory notice of such seizure to the owner's trustee in bankruptcy, who claimed the return of the securities. The Commissioners brought proceedings against the trustee under s. 207 for the "forfeiture and condemnation" of the securities. The defendant contended that the proceedings were barred by the terms of s. 257.

HILBERY, J., said that the defendant contended that "all suits" meant all such suits as could be brought under the Act; and, further, that in 1876 "suit" had a civil connotation, so that Parliament must have intended the Act to extend to civil proceedings. The section was one of four grouped under the heading "as to prosecution and indictment," and dealing with procedural matters in prosecutions, and it contained the qualification "for any offence against the Customs Acts." It would therefore apply to criminal proceedings only, unless the present case was a "suit for an offence against the Customs Acts," which it was not. It was a claim to have certain articles which had been seized condemned by the court. When the Customs seized goods liable to forfeiture, then by s. 207, unless a written claim was made to the things seized, the Customs might sell them and give a good title. If a claim was made within one month of seizure, the Commissioners must apply to the court for the forfeiture or condemnation of the goods; hence the present proceedings, which were not a suit for an offence under the Acts, but a suit to determine the legality of the seizure. Throughout the Act the word "forfeiture" was used in two different ways, for both the articles confiscated and for the many penalties incurred for contraventions of the Act. Throughout a number of sections there ran a distinction between an information for an offence and proceedings to establish the liability to forfeiture of goods seized; when s. 257 spoke of "suits for an offence" it might cover a suit for a penalty resulting from the commission of an offence; it was not intended to refer to such a suit as the present. There would be an order that the securities seized should be forfeited and condemned. Judgment for the plaintiffs.

APPEARANCES: *J. P. Ashworth* (*Solicitor for Customs and Excise*); *F. H. Lawton* (*Nordon & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 575

COURT OF CRIMINAL APPEAL

LARCENY: MISAPPLICATION OF PROCEEDS OF EMPLOYERS' CHEQUES

R. *v.* Davenport

Lord Goddard, C.J., Cassels and Slade, JJ.
22nd February, 1954

Appeal against conviction.

The appellant, the secretary of a company, received blank cheques signed by the directors of the company, and it was his duty to fill in the names of the payees. On a number of occasions the appellant paid the cheques to his own creditors by filling in as payee the name of the creditor's bank. In three other instances he gave cheques to one *S*, having filled in the name of *S's* bank as payee, and *S* cashed the cheques by giving the appellant either cash or open cheques. The appellant was convicted on an indictment containing fourteen counts, charging him with larceny as a servant of moneys (the proceeds of the cheques). He appealed.

LORD GODDARD, C.J., said that to charge the appellant with larceny showed a misapprehension of the elementary principles of the laws of larceny and banking. There was no larceny because there was no asportation. The fallacy had been to think that if the master's account got debited there must be a theft. But money paid into a bank was the bank's; the master was the bank's creditor; the contract between banker and customer was that the customer made a loan to the bank, which promised to honour his cheques. If the charge had been fraudulent conversion of the cheques, there could have been no answer to it. The counts other than the three relating to the transactions with *S* must be quashed. Under those counts *S* cashed the cheques and the appellant received cash; so that the money, the proceeds of the master's cheques, was received for and on behalf of the master, and the transactions constituted embezzlements (*R.* v. *Gale* (1876), 2 Q.B.D. 141). The court could therefore apply the provisions of s. 44 (2) of the Larceny Act, 1916, and s. 5 (2) of the Criminal Appeal Act, 1907, and substitute verdicts of guilty of embezzlement. The appellant had only received a sentence of eighteen months' imprisonment on each count, to run concurrently; he had been guilty of the most atrociously dishonest conduct and the court would not alter the sentence in view of the quashing of the other counts. Appeal allowed in part.

APPEARANCES: *E. Myers* (*Beach & Beach*); *Maxwell Turner* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 569

MR. J. A. BRAIN

Mr. John Atkins Brain, solicitor, of Reading, died on 11th March, aged 62. He was a magistrates' clerk from 1934 to 1942, and from 1938 to 1942 was president of the Reading Chamber of Commerce. He was admitted in 1914.

MR. G. S. RITCHIE

Mr. George Southern Ritchie, solicitor, of Burnley, died recently, aged 73. He was a former president of Burnley and District Incorporated Law Society and was admitted in 1902. During the 1914–18 war he was awarded the Military Cross.

SURVEY OF THE WEEK

ROYAL ASSENT

The following Bills received the Royal Assent on 18th March :—

Development of Inventions.
Rights of Entry (Gas and Electricity Boards).

HOUSE OF LORDS

Progress of Bills

Read First Time :—

Pensions (Increase) Bill [H.C.] [17th March.

Slaughterhouses Bill [H.L.] [18th March.

To make local authorities responsible for the time being for securing that adequate slaughterhouse facilities are available locally; to explain and amend the law with respect to the provision by local authorities of public slaughterhouses, the making of charges in respect of such slaughterhouses, and the grant and renewal of licences under section fifty-seven of the Food and Drugs Act, 1938; to make further provision with respect to the regulation and restriction of private slaughterhouses, and the payment of compensation where a licence or registration in respect of such a slaughterhouse is refused or ceases to be in force; and for purposes connected with the matters aforesaid.

Read Second Time :—

Shrewsbury Estate Bill [H.L.] [17th March.

Read Third Time :—

Newcastle-upon-Tyne Corporation Bill [H.L.] [16th March.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Army and Air Force (Annual) Bill [H.C.] [17th March.

To provide, during twelve months, for the discipline and regulation of the Army and the Air Force.

Consolidated Fund (No. 2) Bill [H.C.] [17th March.

To apply certain sums out of the Consolidated Fund to the service of the years ending on the thirty-first day of March, one thousand nine hundred and fifty-three, one thousand nine hundred and fifty-four and one thousand nine hundred and fifty-five.

Metropolitan Common Scheme (Ham) Provisional Order Bill [H.C.] [17th March.

To confirm a Scheme for amending a Scheme under the Metropolitan Commons Acts, 1866 to 1898, with respect to Ham Common in the County of Surrey.

Telegraph Bill [H.C.] [16th March.

To authorise increased charges for telegrams, and for purposes connected with such charges.

Read Second Time :—

Hire Purchase Bill [H.C.] [19th March.
Industrial and Provident Societies (Amendment) Bill [H.C.] [19th March.
Northern Assurance Bill [H.L.] [15th March.
Town and Country Planning Bill [H.C.] [15th March.

Read Third Time :—

British Industries Fair (Guarantees and Grants) Bill [H.C.] [18th March.
Crewe Corporation Bill [H.C.] [18th March.
Towcester Rural District Council (Abthorpe Rating) Bill [H.C.] [15th March.
Wear Navigation and Sunderland Dock Bill [H.C.] [15th March.

In Committee :—

Atomic Energy Authority Bill [H.C.] [17th March.

B. Debates

On the second reading of the **Town and Country Planning Bill**, Mr. Harold Macmillan said that the Bill provided a new system of compensation. It would be based on the claims admitted under the 1947 Act, but would be paid out only as and when realisation of the 1947 development value of land was prevented, whether through compulsory purchase for some public need or through refusal of permission to develop. The benefits of the planning provisions of the 1947 Act would be preserved without the evil of development charge.

The Bill was complicated by the fact that under the 1947 Act claims for loss of development value became separated from the land and were now a species of personal property capable of being bought and sold independently of the land. The essence of the present scheme, on the other hand, was that claims in future were to attach to the land.

The first obligation was to people who had already paid development charge, or sold their land for less than its full value, sometimes voluntarily, sometimes under compulsion. A person would not, however, get compensation merely because he had paid development charge. It would be paid to those who held a claim or paid a high price for land without taking over the claim and had since paid the development charge. Hence the complication of the Bill; it had to provide for settling accounts under two different systems as well as for affecting a transition from one system to another.

The Bill contained no alteration of the planning provisions of the 1947 Act—it dealt only with the financial provisions. Within the next two or three years the Government of the day might well find it necessary to introduce a general amending Bill to put right difficulties and, if possible, simplify procedure. He felt he ought to tell the House that the Bill did nothing for people who ought to have made claims under the 1947 Act but had not done so. To re-open the right to claim would create an appalling amount of work for a very small and haphazard result. However, the Bill did nothing to worsen the position of those people. [15th March.

When the question of **affiliation orders against American servicemen** was raised on the adjournment, Mr. Anthony Nutting, replying for the Government, said that since 1942 American servicemen in this country had shared the immunity from enforcement proceedings in British courts which is conferred on British servicemen by ss. 144 and 145 of the Army Act. That immunity would continue until the Visiting Forces Act came into force.

Further, since 1949 the American Army authorities had been unable to pay allowances on behalf of illegitimate children from the pay of American servicemen. Nor, since 1950, could they take disciplinary action against servicemen refusing to comply with an affiliation order.

When the Visiting Forces Act, 1952, came into force an affiliation order made by a British court against a member of a visiting force would be enforceable by committal to prison. Mr. Nutting said that he believed that existing orders would then become enforceable in the same way as orders made after the Act, though he could not anticipate the courts' decisions.

Once the American serviceman left this country, however, no British affiliation order could be enforced against him. That position was unaltered and unalterable. The question of compliance with affiliation orders by Americans who left this country was being discussed with the United States authorities, but, whatever arrangements were arrived at, those authorities would have absolutely no power under their own law over a serviceman once he had left the armed forces.

The United States Veterans Administration had power in approved cases to make pay allotments on behalf of illegitimate children from ex-servicemen's education and disability grants. [19th March.

C. Questions

Constituents' Letters to Members of Parliament

The Prime Minister stated that disclosure to third parties of letters sent on to Ministers by Members of Parliament who had received them from their constituents was often necessary to find out the facts or to remedy the matter complained of. The matter could not be dealt with by a rule against disclosure, but clearly the Departments must exercise great discretion as to the circumstances in which disclosure was appropriate and a reminder was being sent to Departments in that sense. Asked whether he thought members or civil servants who disclosed a letter from a constituent which happened to be libellous would be liable for defamation, the Prime Minister said he thought they would have a good defence. [16th March.

U.S. COURT MARTIAL, BURTONWOOD (BRITISH WITNESS)

The HOME SECRETARY said the U.S. authorities had brought a serviceman back to this country at great expense and put him on trial for offences against a witness who had refused to testify, and the charges had been withdrawn in consequence. If a witness in this country refused to answer questions lawfully put by a court-martial, British or American, the president of the court-martial could certify the offence to a British court of record, who might inquire into the facts and punish the witness. No doubt the witness in this case had been properly reminded of this power by the U.S. court-martial. [17th March.

LOCAL FOOTBALL POOLS

The HOME SECRETARY said there was nothing to prevent a local club or charitable organisation from conducting a football pool provided that it was on credit terms and was so conducted that it was not a lottery. Sections 23 and 24 of the Betting and Lotteries Act, 1934, also legalised certain types of small lotteries, but he could hold out no hope of legislation to amend that Act so as to extend the conditions on which the promotion of lotteries was permitted. [18th March.

STATUTORY INSTRUMENTS

Draft **Civil Defence** (Electricity Undertakings) Regulations, 1954. 5d.

Civil Defence (Gas Undertakers) Regulations, 1954. (S.I. 1954 No. 269.)

Draft Civil Defence (North of Scotland Hydro-Electric Board) Regulations, 1954.

Civil Defence (Transport) Regulations, 1954. (S.I. 1954 No. 274.) 5d.

Coal Distribution (Amendment) Order, 1954. (S.I. 1954 No. 270.)

County of Inverness (Allt Neacrath, Tomatin) Water Order, 1954. (S.I. 1954 No. 286 (S. 30).) 5d.

County of Inverness (Breakachy Burn, Beauly) Water Order, 1954. (S.I. 1954 No. 287 (S. 31).) 5d.

County of Inverness (Ruith Allt) Water Order, 1954. (S.I. 1954 No. 288 (S. 32).) 5d.

Draft **Education Authorities** (Scotland) Grant (Amendment No. 4) Regulations, 1954.

Exchange Control (Authorised Dealers) Order, 1954. (S.I. 1954 No. 261.) 5d.

Exchange Control (Authorised Depositaries) Order, 1954. (S.I. 1954 No. 262.) 5d.

Exeter—Leeds Trunk Road (Newport Diversion) Order, 1954. (S.I. 1954 No. 291.)

Greenock Water Order, 1954. (S.I. 1954 No. 285 (S. 29).)

Guildford (Extension) Order, 1954. (S.I. 1954 No. 273.) 8d.

Import Duties (Drawback) (No. 1) Order, 1954. (S.I. 1954 No. 257.)

Import Duties (Drawback) (No. 2) Order, 1954. (S.I. 1954 No. 258.)

Import Duties (Exemptions) (No. 3) Order, 1954. (S.I. 1954 No. 297.)

Isles of Scilly (Superannuation) Order, 1954. (S.I. 1954 No. 284.)

Local Government (Travelling Allowances, etc.) (Scotland) Regulations, 1954. (S.I. 1954 No. 265 (S. 28).) 6d.

London Traffic (Miscellaneous Provisions) (Amendment) Regulations, 1954. (S.I. 1954 No. 290.) 5d.

London Traffic (Prescribed Routes) (No. 5) Regulations, 1954. (S.I. 1954 No. 275.)

Milk (Special Designations) (Specified Areas) Order, 1954. (S.I. 1954 No. 282.) 5d.

Petty Sessional Divisions (Lancashire) Order, 1954. (S.I. 1954 No. 283.) 6d.

Petty Sessional Divisions (Norfolk) Order, 1954. (S.I. 1954 No. 289.) 6d.

Petty Sessional Divisions (Oxfordshire) Order, 1954. (S.I. 1954 No. 251.) 6d.

Poisons List Order, 1954. (S.I. 1954 No. 266.)

Poisons Rules, 1954. (S.I. 1954 No. 267.)

Retention of Cables, Mains and Pipes under Highways (Cornwall) (No. 1) Order, 1954. (S.I. 1954 No. 279.) 5d.

Retention of Cables, Mains and Pipes under Highways (Lincolnshire—Parts of Lindsey) (No. 1) Order, 1954. (S.I. 1954 No. 280.)

Stopping up of Highways (County of Southampton) (No. 1) Order, 1954. (S.I. 1954 No. 277.)

Stopping up of Highways (Exeter) (No. 1) Order, 1954. (S.I. 1954 No. 281.)

Stopping up of Highways (London) (No. 6) Order, 1954. (S.I. 1954 No. 292.)

Stopping up of Highways (Soke of Peterborough) (No. 1) Order, 1954. (S.I. 1954 No. 278.)

Superannuation (Transfers between the Civil Service and Public Boards) (Amendment) Rules, 1954. (S.I. 1954 No. 263.)

Usk River Board Transfer Order, 1954. (S.I. 1954 No. 276.) 5d.

Virus Hepatitis Order, 1954. (S.I. 1954 No. 268.) 5d.

Ware Potatoes (Amendment) Order, 1954. (S.I. 1954 No. 264.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–3 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. CHARLES FRANCIS BAGOT GILMAN, solicitor, of Oxford, has been appointed by the Oxfordshire Magistrates' Courts Committee to be clerk to the South Wootton Petty Sessional Division.

Mr. CHARLES DAVID PARTRIDGE, solicitor, of Walsall, has been elected the new chairman of the Walsall Junior Chamber of Commerce.

The following appointments are announced in the Colonial Legal Service: Sir KENNETH K. O'CONNOR, Chief Justice, Jamaica, to be Chief Justice, Kenya; Mr. L. A. DAVIES to be Resident Magistrate, Tanganyika; Mr. J. C. MCROBERT to be Crown Counsel, Hong Kong; and Mr. C. M. STEVENS to be Legal Assistant, Hong Kong.

Personal Notes

Mr. Donald Roberts Jones, solicitor, of Bala, Corwen, Barmouth and Dolgelley, was married on 13th March to Miss Jane Jones, of Corwen.

Miscellaneous

The annual general meeting of the Bar will be held in the Middle Temple Hall, on Monday, 26th April, at 3 p.m. The Attorney-General will preside. Any member of the Bar shall be at liberty to bring forward for discussion at the above meeting any resolution, provided that notice thereof shall have been given in writing to the Secretary of the General Council of the Bar not later than ten clear days before the day of meeting.

THE LAW SOCIETY

SPECIAL PRIZES FOR THE YEAR 1953

The Scott Scholarship: J. G. Fleming, B.A. Cantab. *The Broderip Prize for Real Property and Conveyancing:* P. J. Bunker, B.A., LL.B. Cantab. *The Clabon Prize:* L. Oldman, LL.B. London. *The Robert Innes Prize:* J. D. Hodge, B.A., LL.B. Cantab. *The Maurice Nordon Prize:* J. G. Fleming, B.A. Cantab. *The John Marshall Prize:* B. Greenman. *The Geoffrey Howard-Watson Prize:* G. Lazarus, LL.B. London. *The Justices' Clerks' Society's Prize:* C. F. Grimwood. *The Samuel Herbert Easterbrook Prize:* Miss R. M. C. Archer. *The Cecil Karuth Prize:* A. G. McIntosh.

LOCAL PRIZES

The Atkinson Conveyancing Prize for Liverpool or Preston Students: T. Keane, LL.B. London. *The Rupert Bremner Medal for Liverpool Students:* T. Keane, LL.B. London. *The Timpron Martin Prize for Liverpool Students:* T. Keane, LL.B. London. *The Birmingham Law Society's Bronze Medal:* D. H. T. Day, B.A., LL.B. Cantab. *The City of London Solicitors' Company's Prize:* G. Lazarus, LL.B. London. *The City of London Solicitors' Company's Grotius Prize:* J. G. Fleming, B.A. Cantab. *The Sir George Fowler Prize:* J. C. Hall, M.A., LL.B. Cantab. *The Mellersh Prize:* P. J. Bunker, B.A., LL.B. Cantab. *The Wakefield and Bradford Prize:* A. K. Hill, M.A. Oxon. *The Alfred Syrett Prize:* G. Jarra.

DEVELOPMENT PLAN

COUNTY COUNCIL OF LINCOLN, PARTS OF HOLLAND, DEVELOPMENT PLAN (AMENDED NOTICE)

On 11th January the Minister of Housing and Local Government amended the above development plan. Certified copies of the plan as amended by the Minister have been deposited at the offices of the County Planning Officer, 21 Haven Bank, Boston, and Harrington House, Broad Street, Spalding, at the Boston Rural District Council Offices, 126 London Road, Boston, and at the East Elloe Rural District Council Offices, Mattimore House, Holbeach. The copies of the plan so deposited will be open for inspection free of charge by all persons interested between 9.30 a.m. and noon on Saturdays and between 9.30 a.m. and 5 p.m. on other week-days. The amendment became operative as from 2nd March but if any person aggrieved by it desires to question the validity thereof or of any provision contained therein on the ground that it is not within the powers of the Town and Country Planning Act, 1947, or on the ground that any requirement of the Act or any regulation made thereunder has not been complied with in relation to the making of the amendment, he may, within six weeks from 2nd March, make application to the High Court.

The Minister of Housing and Local Government has instructed Mr. W. N. Cortis, one of his inspectors, to hear, at a public inquiry at County Hall, Northallerton, opening on Thursday, 13th May, at 11 a.m., representations and objections to the Yorkshire Dales National Park (Designation) Order, 1953, which the National Parks Commission have submitted to him for confirmation.

Wills and Bequests

Mr. R. E. Hill, solicitor, of St. Albans, left £50,050 (£49,787 net).

Mr. R. Samble, solicitor, of Burton-on-Trent, left £30,196 (£29,101 net).

SOCIETIES

The annual general meeting and dinner of the BENTHAM CLUB was held at University College, London, on 23rd February. Professor H. F. Jolowicz, D.C.L., LL.D., delivered his presidential address on "Louisiana and the Civil Law in the U.S.A."

The UNION SOCIETY OF LONDON announce the following subjects for debate: Wednesday, 31st March, "That this country should not co-operate with General Franco under any circumstances"; Wednesday, 7th April (joint debate with the Cambridge Union Society), "That university education is an unnecessary prolongation of childhood." Meetings are held in the Common Room, Gray's Inn, at 8 p.m. The next meeting will be held on Wednesday, 28th April.

The UNITED LAW SOCIETY announce the following programme: Monday, 5th April, Debate: "That Members of Parliament should get neither rises nor pensions"; Monday, 12th April, Debate: "That this House prefers Senator McCarthy to Comrade Malenkov"; Monday, 3rd May, Debate: "That marriage for love is a profound mistake."

The SOLICITORS' ARTICLED CLERKS' SOCIETY announce the following programme for April: 8th, Reel Club: Law Society's Hall, Chancery Lane, at 6 p.m. Refreshments. Members 1s., non-members 1s. 6d. 13th, Courts of Summary Jurisdiction: H. H. Maddocks, M.C., Magistrate at Tower Hill, 6 p.m. for 7 p.m. Law Society's Hall. 22nd, Theatre Party: Full details from Miss P. Baigent (Pollard 7542, evenings only). 29th, Mock Trial: Law Society's Hall, 6.30 p.m. A jury will be selected from members present.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Productivity in the Office

Sir,—We hear a great deal about productivity. One gains the impression that this depends entirely on how many motor cars and how much textiles, etc., can be produced in factories.

When is someone going to introduce high productivity methods into offices? Day after day I receive long screeds, about 50 per cent. of which are quite unnecessary. Some country solicitors are the worst offenders through putting crack-brained provisions in contracts. They can rarely give a single reason for seeking to preclude the purchaser from making proper inquiry into the title, the tenancies, town planning and similar matters. Very few London firms do it.

Why cannot they use the ordinary printed forms? Time lost in sorting out their individual fancies is enormous. The offenders should realise that a purchaser wants a property and not an argument.

FRANK STIMPSON.

London, S.E.23.

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